

**MOSS v. BALLARD**  
**CASE NO. 2:09cv01406**

**RESPONDENT'S EXHIBIT 20**  
**(CONTINUATION, pp. 901 - 1050)**

Pomeroy - Direct

901

1 the scratches. There was one Band Aid.

2 Q But more than one scratch?

3 A Yes.

4 Q Where on his face were they?

5 A I really couldn't say just exactly  
6 where. They were just on his face.

7 Q Previously, I handed you what has been  
8 marked as State's Exhibit 100. You testified John Moss  
9 gave you silverware that night prior to going back to  
10 Cleveland. What did you do with that silverware later?

11 A When he gave it to me, I opened it,  
12 since he wasn't going to be there Christmastime, I opened  
13 it in front of him and thanked him, then I just took it  
14 to my bedroom and put it in a chest of drawers.

15 Q You say you opened it. What do you  
16 mean?

17 A I took the wrapping paper off.

18 Q It was wrapped in wrapping paper?

19 A Right.

20 Q What about the plastic wrap around the  
21 gift itself?

22 A I left it on there.

23 Q You never opened that?

24 A I never really opened the silverware.

Pomeroy - Direct

902

1 Q You say you put it on your chest?

2 A Yes.

3 Q Did there come a time when you gave it  
4 to someone else later?

5 A Yes.

6 Q Who was that?

7 A Two officers came to the motel to ask  
8 me questions, if I knew John Moss. We talked for some  
9 time, and they asked me different questions, and I  
10 offered the silverware to them, saying that he gave it  
11 to me as a gift.

12 Q Were those officers State Police?

13 A Yes.

14 Q Do you see John Moss in the Courtroom  
15 here today?

16 A Yes, I do.

17 Q Would you please point him out?

18 A He's sitting there with the beige and  
19 brown jacket on, and a brown tie.

20 MR. REVERCOMB: Let the record reflect that she  
21 has indicated the defendant.

22

23 BY MR. REVERCOMB:

24

Pomeroy - Direct

903

1 Q Now, is this the man that gave you the  
2 silverware?

3 A Yes, it is.

4 MR. REVERCOMB: That's all I have.

5

6 CROSS-EXAMINATION

7

8 BY MR. HUFFMAN:

9 Q Ms. Pomeroy, your name at that time was  
10 Johnson, is that right?

11 A Yes. Arbutus Johnson Pomeroy.

12 Q How long were you the manager there at  
13 the Town 'N Country Motel?

14 A For about two years.

15 Q And your son Billy was a schoolmate of  
16 John Moss; is that correct?

17 A Yes.

18 Q And I think they also worked together  
19 at Chef Wong's; is that right?

20 A Yes.

21 Q And throughout the course of their  
22 friendship, Mr. Moss has spent a fair amount of time at  
23 your place where you stayed at the motel. That's true;  
24 isn't it?

Pomeroy - Cross

904

1 A Yes.

2 Q And in fact, he was there in the  
3 summertime and swam in the pool that you had -- there was  
4 an olympic size pool there; is that right?

5 A Right.

6 Q Would it be fair to say that he has  
7 spent a fair amount of time at your house and even shared  
8 meals there; is that correct?

9 A Yes.

10 Q You don't really remember what day it  
11 was that John gave you this silverware; do you, like,  
12 Monday, Tuesday, Wednesday, or something like that? Or  
13 the date, as the 13th, 16th, the 12th, the 11th? You  
14 don't remember the exact date; do you?

15 A No, I just know that it was during the  
16 holidays. It was at Christmastime. We were decorating.

17 Q Now, if I understand your testimony  
18 correctly, the scratches you observed on John were on his  
19 face; is that correct?

20 A Yes.

21 Q And then you talked with two Police  
22 Officers in February of 1980?

23 A Yes.

24 Q And at that time, they didn't

Pomeroy - Cross

905

1 specifically say to you, "Did someone give you a gift of  
2 silverware?" Is that correct? They didn't ask you  
3 anything specific like that; did they?

4 A That's correct, no.

5 Q John never gave you a set of dishes;  
6 did he?

7 A No.

8 MR. HUFFMAN: I don't have any further questions,  
9 Judge.

10

11 REDIRECT EXAMINATION

12

13 BY MR. REVERCOMB:

14

15 Q Mr. Huffman asked you, or stated to  
16 you, that you didn't know the exact date he gave you the  
17 silverware; is that correct?

18 A No.

19 Q I think you've already stated that it  
20 was the night before he went back, or a couple of nights?

21 A It was the night before. He wasn't  
22 going to be there for Christmas. He wanted to give me  
23 the gift, so he brought it to the motel the night before  
24 he left to go to Cleveland.

Pomeroy - Redirect

906

1 Q Do you know approximately how close to  
2 Christmas it was?

3 A It was just a few days, just a short  
4 time before Christmas.

5 Q Two or three?

6 A I know we were decorating.

7 MR. HUFFMAN: Your Honor, I'm going to object to  
8 Mr. Revercomb's testimony. He is feeding her the  
9 answers.

10 THE COURT: Objection sustained.

11

12 BY MR. REVERCOMB:

13

14 A I don't remember the exact date, no.

15 Q But it was after these murders?

16 A Yes.

17 MR. REVERCOMB: That's all I have.

18 MR. HUFFMAN: No further questions.

19 THE COURT: Thank you, Ms. Pomeroy. You may step  
20 down.

21 Folks, we're going to take up a brief matter out  
22 of your presence, as I said we might do from time to  
23 time. I'm going to excuse you, then, for about -- how  
24 long do you think, about fifteen minutes?

907

1 MS. LUSK: Yeah, that would be all right.

2 THE COURT: You'll have time to go get a cup of  
3 coffee.

4

5 WHEREUPON, the jury stood in a recess in the  
6 hearing of this case.

7

8 (Back on the Record with the jury not present)

9

10 WHEREUPON, Sergeant Michael Don Smith was duly  
11 sworn, and upon his oath, deposed as follows:

12

13 DIRECT EXAMINATION

14 (In Camera)

15

16 BY MS. LUSK:

17

18 Q Would you state your name, please?

19 A Michael Don Smith.

20 Q You are employed by the West Virginia  
21 State Police?

22 A Yes, I am.

23 Q Were you so employed in 1979 and 1980?

24 A Yes.



Smith - Direct (In Camera)

908

1 Q In January of 1980, did you have  
2 occasion to travel to Cleveland, to the Juvenile  
3 Detention Center, there to meet with John Moss, III?

4 A Yes, I did.

5 Q Is he present here in the Courtroom  
6 today?

7 A Yes.

8 Q Could you point him out for us?

9 A He's sitting right there at this table  
10 to the right.

11 MS. LUSK: May the record reflect that the  
12 witness has identified the defendant.

13

14 BY MS. LUSK:

15

16 Q Upon meeting with him at the Juvenile  
17 Detention Center, did you advise him of his  
18 constitutional rights?

19 A Yes, ma'am.

20 Q How did you do that?

21 A From the back of the -- there's a  
22 Miranda Warning on the back of my Department of Public  
23 Safety I.D. card, and I read that Miranda Rights -- or  
24 the Miranda Warning from the back of the card.

Smith - Direct (In Camera)

909

1 MR. BICKLEY: May we approach the bench, your  
2 Honor.

3 THE COURT: Yes.

4

5 WHEREUPON, a bench conference was held, where the  
6 following transpired:

7

8 MR. BICKLEY: I believe that this entire  
9 transaction is the time when they legally obtained blood  
10 from John.

11 THE COURT: Illegally?

12 MR. BICKLEY: Illegally -- they had to get it  
13 back. And I think that everything here is tainted  
14 because of that.

15 THE COURT: Well, I've got to hear it to find  
16 out.

17 MR. BICKLEY: All right.

18

19 WHEREUPON, the bench conference was concluded.

20

21 (Back on the Record\_

22

23 BY MS. LUSK:

24

Smith - Direct (In Camera)

910

1 Q Now, let me hand you what has been  
2 marked as State's Exhibit 91, and ask you if you can  
3 identify that item?

4 A Yes.

5 Q What is it, please?

6 A It's the I.D. card that I was speaking  
7 of.

8 Q Is that the one you used in 1980, in  
9 January of 1980?

10 A Yes.

11 Q Is that the one you used to advise John  
12 Moss of his constitutional rights?

13 A Yes.

14 Q How did you advise him of his rights?

15 A I verbally read to him the Miranda  
16 Warning that's on the back of this card.

17 Q Would you read it as you did in January  
18 of 1980?

19 A Yes. It says:

20 "You have the right to remain silent. If you  
21 agree to answer questions, anything you do say may be  
22 used against you in a Court of Law. You have the right  
23 to consult with an attorney before speaking to the Police  
24 and to have an attorney present upon or before any

Smith - Direct (In Camera)

911

1 questioning, now or in the future. If you cannot afford  
2 an attorney, one will be provided for you without cost.  
3 If you do not have an attorney available, you have the  
4 right to remain silent until you have had an opportunity  
5 to consult with one.

6 "Now that you have been advised of your rights,  
7 are you willing to answer questions without an attorney  
8 present?"

9 Q What was his response?

10 A He stated that he would talk to us, and  
11 that he did understand what I had read to him.

12 Q Was Trooper Williams with you?

13 A Yes.

14 Q And John Moss was being held in a  
15 Juvenile Detention Center there on Ohio charges?

16 A Yes.

17 Q That was before he was transferred to  
18 adult status in Ohio?

19 A Yes.

20 Q After you read the Miranda Warnings,  
21 what happened?

22 A Well, I asked him some questions  
23 concerning some other matters.

24 Q Concerning some other crimes?

Smith - Direct (In Camera)

912

1           A           Some other crimes, yes. And also, I  
2 mentioned the murders in the Reggett family, if he had  
3 some knowledge of that, and he said yes.

4           In West Virginia, prior to leaving West Virginia

5       ---

6           THE COURT: I'm sorry. When did this occur?

7           THE WITNESS: This actual meeting with John?

8           THE COURT: Yes.

9           THE WITNESS: January 30th of 1980.

10

11       BY MS. LUSK:

12

13           A           After that, he said he was  
14 knowledgeable that that had occurred.

15           I asked him if he had any knowledge of who may  
16 have had a personal knowledge of it, and he said that he  
17 didn't.

18           And I asked him if he thought Vanessa Reggett  
19 was pretty, and his response to that was, he thought she  
20 had bumps, and he also took his hands and kind of  
21 motioned in the area of her chin and lower cheeks,  
22 stating that he thought she had bumps.

23           MS. LUSK: That's all I have.

24           Oh, wait, let me ask a couple of more foundation

Smith - Direct (In Camera)

913

1 questions, excuse me.

2 Q During this period of time, did you  
3 make any promises or threats to John Moss?

4 A No, I didn't.

5 Q Did he indicate to you at any time that  
6 he did not want to talk to you or that he wanted to stop  
7 talking to you?

8 A No, he didn't.

9 Q Did he ever indicate that he had a  
10 lawyer or that he wanted a lawyer?

11 A He told me that he did not have a  
12 lawyer.

13

14 CROSS-EXAMINATION

15 (In Camera)

16

17 BY MR. BICKLEY:

18

19 Q On that same occasion, did none of the  
20 lawyers come over and tell you that he had a lawyer?

21 A What?

22 Q Were you advised by a female lawyer who  
23 was also in the room at that time that he had a lawyer?

24 A No, sir, I was not.

Smith - Cross (In Camera)

914

1 Q Did you not take some blood from him at  
2 that time, on that occasion?

3 A Yes, sir, there was some taken at that  
4 time.

5 Q And was it not subsequently that that  
6 blood had to be returned to Cleveland?

7 A Yes.

8 Q Is that not true?

9 A Yes, that's true.

10 Q Why was that true?

11 A We were told that we had to give the  
12 blood back because, I guess, it was against their  
13 procedures there in Ohio.

14 Q Against their procedures in Ohio?

15 A Yes.

16 Q I see. And so the blood was illegally  
17 taken, would that be a correct statement?

18 A We were told through the Court in Ohio  
19 that we were to give it back to them.

20 Q Did they tell you why you had to give  
21 it back?

22 A It was my understanding that it was  
23 against their rules or their procedures as to the way  
24 that the blood was taken.

Smith - Cross (In Camera)

915

1 Q Sergeant Smith, did you all run any  
2 tests on that blood before you gave it back?

3 A No, sir, we gave it back immediately.

4 Q You gave the entire sample back; you  
5 didn't turn anything over to the serology lab?

6 A No, sir.

7 MR. BICKLEY: No further questions, your Honor.

8 MR. LUSK: I don't have any further redirect.

9 THE COURT: May the officer step down?

10 MS. LUSK: Yes.

11 THE COURT: Thank you.

12

13 WHEREUPON, Sergeant Michael Don Smith was  
14 excused.

15

16 THE COURT: Now, tell me what this is in aid of?

17 MS. LUSK: What it's in aid of?

18 THE COURT: Yes.

19 MS. LUSK: Well, your Honor, it's our position  
20 that the photographs you can see of Vanessa Reggett at  
21 the scene, after her death, she looks like she has acne.  
22 The petechiae, which the Medical Examiner notes as  
23 petechiae, to a layman looks like acne, and we have the  
24 Polaroid photograph that shows that in life, she had a



1 pretty complexion, but in death, she looks like she had  
2 acne.

3 THE COURT: Is there a date on that?

4 MS. LUSK: November 5, 1979. So, it's our  
5 position that in life she had a pretty complexion, and  
6 in death she looked like she had acne. And only the  
7 murderer would know that.

8 MR. BICKLEY: Your Honor, we think that the whole  
9 statement ought to be exempted. They were there. They  
10 illegally obtained blood, and they had to return all  
11 evidence of the blood that they had received from John  
12 Moss at that time. In fact, they had to go back, which  
13 they did in April, and -- to obtain the blood in the  
14 correct manner. And it wasn't just Ohio law, it was West  
15 Virginia law, as well, as far as the procedure, in order  
16 to secure the blood from a juvenile.

17 Number two, I think that the conjecture between  
18 this ---

19 THE COURT: Do you know what the procedures are  
20 in West Virginia and in Ohio law? Surely, there is no  
21 constitutional bars about the taking of blood?

22 MR. BICKLEY: Well, what I read, and I'm not  
23 positive because the Trooper has denied it, but, that at  
24 the time they were there, a female lawyer went over, and

917

1 maybe one of them was Trooper Smith -- keep in mind that  
2 I'm not doubting what has just been said -- but she  
3 informed him that he did have an attorney, and that he  
4 should contact the attorney, or they should contact the  
5 attorney. And they failed to do that when they took the  
6 blood, or at least that's the information that I  
7 received.

8 But in any event, they had to return the entire  
9 sample. And since the jury is out for the limited  
10 purpose of this testimony, we'll put Mr. Moss on the  
11 stand to testify as to what actually transpired.

12 THE COURT: Okay.

13

14 WHEREUPON, John Moss was duly sworn, and upon his  
15 oath deposed as follows:

16

17 DIRECT EXAMINATION

18 (In Camera)

19

20 BY MR. BICKLEY:

21

22 Q Would you state your name, please?

23 A John Moss, III.

24 Q Are you the defendant in this case?

Moss - Direct (In Camera)

918

1 A Yes, I am.

2 Q Mr. Moss, I want to direct your  
3 attention to January the 3rd, when Trooper Smith and  
4 Trooper -- uh, on January the 30th, when Trooper Smith  
5 and Trooper Williams came to Cleveland to see you.

6 Would you tell the Court exactly what transpired?

7 A Well, I was -- a guard came down and  
8 told me I had some visitors out in the visiting room, so  
9 I go down in the visiting room and visit with the  
10 lawyers, but Trooper Smith and Trooper Williams was out  
11 there waiting on me. So, they asked me a few questions.  
12 They asked me did I want to talk to them about some  
13 crimes here in West Virginia, and I told them, "I ain't  
14 got nothing to tell them. I don't know nothing about  
15 what's going on down in here besides what I seen in the  
16 paper."

17 They were referring to the Reggettz murders, and  
18 they asked me if I would give them a sample of blood and  
19 I told them yes, I had nothing to hide.

20 And this lady lawyer that was sitting -- I don't  
21 know, about seven or eight feet from us -- she come over  
22 there and said, "Do you know this child has a lawyer?"  
23 And she asked them had they talked to the lawyer and they  
24 said, "We didn't know he had one." So, she asked them

Moss - Direct (In Camera)

919

1 to come back when they had talked to my lawyer, and I had  
2 a chance to talk to mine. And they just left. And  
3 that's the last I seen of them that day.

4 Q Do you recall telling Trooper Smith  
5 about the acne on Mrs. Reggett?

6 A No, he never asked me anything about  
7 how she looked.

8 MR. BICKLEY: I have no further questions.

9

10 CROSS-EXAMINATION

11 (In Camera)

12

13 BY MS. LUSK:

14

15 Q Do you recall that Trooper Smith --  
16 Sergeant Smith advised you of your rights from the I.D.  
17 card?

18 A On January 30th?

19 Q Yes.

20 A No.

21 Q You're saying that he did not advise  
22 you of your rights?

23 A No. He did not advise me of any  
24 rights.

Moss - Cross (In Camera)

920

1 Q He just came in there and said, "Hey,  
2 I want to talk to you about some crimes?"

3 A He was there when I got there.

4 Q The first thing he said to you was, "I  
5 want to talk to you about some crimes in West Virginia?"

6 A He asked me how I was doing, and making  
7 a little small play, and he asked about some of my  
8 family, and said he wanted to talk to me about some  
9 crimes in West Virginia.

10 Q So, he just launched into conversation  
11 about crimes, without advising you of your rights?

12 A That's what he did.

13 Q You didn't have any conversation  
14 whatsoever about the Reggett case?

15 A He asked me if I knowed who committed  
16 it.

17 Q He didn't ask you if you thought  
18 Vanessa was pretty?

19 A No.

20 Q You didn't tell him you had a lawyer?

21 A Yes, I did.

22 Q You didn't have a lawyer on any West  
23 Virginia charges; did you?

24 A I was in Ohio.

Moss - Cross (In Camera)

921

1 Q You didn't have a lawyer on any West  
2 Virginia charges; did you?

3 A Yes, I did.

4 Q What charge?

5 A I think it was grand larceny.

6 Q Is that the only one?

7 A A grand larceny and assault, I believe.

8 Q You certainly didn't have a lawyer on  
9 the Reggettz murders?

10 A No, I didn't. I wasn't charged with  
11 the Reggettz murders.

12 Q Did Trooper Smith ask you about other  
13 crimes in West Virginia?

14 A Yes, he did.

15 Q What crimes did he ask you about?

16 A He asked me about the Reggettz murders.

17 Q Any other crimes?

18 A No.

19 Q Did you have any conversations with him  
20 about the felonious assault at the Moose Club?

21 A He might have mentioned it; I don't  
22 remember. I'm not real sure. That was over ten years  
23 ago.

24 Q Whatever conversation you had with him,

Moss - Cross (In Camera)

922

1 what crimes in West Virginia, occurred before your blood  
2 was drawn; right?

3 A Would you repeat the question?

4 Q Whatever conversation you had with  
5 Trooper Smith occurred before he pricked your finger and  
6 you gave him a sample of your blood?

7 A It would have to be. If he talked to  
8 me on the 30th and he got my blood on the 30th.

9 Q On the 30th, the order of events was,  
10 you talked to Smith about crimes and then you pricked  
11 your finger and then the lady come over and talked to the  
12 Trooper?

13 A Yes.

14 Q So, whatever conversation you had with  
15 Smith about crimes, occurred way before the lady came  
16 over and talked to the Troopers, because you had even  
17 pricked your finger and given the blood?

18 A Yes, it might have been. I'm really  
19 not sure. That was a long time ago.

20 The only thing I remember about the lady coming  
21 over there, asking them had they talked to my lawyer, and  
22 that was it. They got up and left. I don't know if this  
23 was before the taking of the blood or after.

24 Q Whatever conversation you had with the

Moss - Cross (In Camera)

923

1 Troopers occurred before the lady came over, because they  
2 immediately left after she came over?

3 A She asked them about the pricking my  
4 finger. I'm saying I don't know if it was before or  
5 after they took the blood.

6 Q Okay. Forget the pricking of the  
7 finger for a moment.

8 The conversation with Trooper Smith about crime  
9 in West Virginia occurred certainly before the lady came  
10 over and talked to you?

11 A It might have.

12 Q Because there was no conversation after  
13 the lady came over?

14 A That's right.

15 Q Now, the pricking of the finger -- they  
16 asked you if you would voluntarily give them a sample of  
17 your blood; right?

18 A Yes.

19 Q And you did?

20 A Yes, I did.

21 Q You pricked your own finger, put a  
22 little bit of the blood on a cloth or some kind of ---

23 A Smith -- he pricked my finger.

24 Q Smith pricked your finger?



Moss - Cross (In Camera)

924

1           A           He stuck it with a little metal piece.  
2           I was sticking it and he said you ain't got -- trying to  
3           stab it or nothing like -- he took my finger and just  
4           stuck it and squeezed it out on a little cotton pad.

5           Q           Your testimony is that you didn't do it  
6           yourself?

7           A           No. He squeezed my finger on a cotton  
8           pad.

9           Q           But you consented to it, no matter who  
10          did it?

11          A           Oh, yes.

12          MS. LUSK: That's all.

13

14                       REDIRECT EXAMINATION

15                       (In Camera)

16

17          BY MR. BICKLEY:

18

19          Q           Mr. Moss, how old were you at the time?

20          A           I was 17.

21          MR. BICKLEY: No further questions.

22          MS. LUSK: That's all.

23          THE COURT: Thank you, Mr. Moss. You may step  
24          down.

Moss - Redirect (In Camera)

925

1 Okay.

2 MR. BICKLEY: Additionally, your Honor, I think  
3 that the probative value of this is minimal, and then,  
4 we've taken great pains to avoid any institutional talk  
5 about John Moss' previous location. Then, we have a  
6 Trooper who comes in and tells this. I don't think --  
7 I think the connection there is so circumstantial that  
8 the value of -- the probative value is minimal, and I  
9 think its prejudicial value is very, very great.

10 MS. LUSK: Judge, the statement certainly has  
11 probative value. I thought that was acne on those  
12 photographs. I was very surprised to learn that it  
13 wasn't. I think it's very important that he perceived  
14 that she had acne.

15 As for the talk about the institution, Judge,  
16 what I would propose is that after Sergeant Smith  
17 testifies about the oral statement, I can ask him if he  
18 also had the opportunity to ask John Moss if he thought  
19 Vanessa Reggett was pretty, and he can go into it right  
20 then and it will sound like it's part of the same  
21 transaction, the same oral confession.

22 THE COURT: By oral confession, are you talking  
23 about the one in Parkersburg?

24 MS. LUSK: Uh-huh. Put it between the oral

1 confession and the taped confession testimony.

2 THE COURT: Well ---

3 MS. LUSK: I mean, that's just food for thought.  
4 That's what I would propose to do.

5 THE COURT: Show me the photographs again.

6 MR. HUFFMAN: Additionally, Judge, we'd like to  
7 know if this is going to be some kind of objection. We'd  
8 like to register an objection on it.

9 MR. REVERCOMB: Judge, there was no probable  
10 cause at that point.

11 MS. LUSK: There are probably other photographs  
12 that show it better than those. When we were going  
13 through the photographs back in chambers the other day,  
14 I think we tried to eliminate the ones that had a full  
15 face view of Vanessa Reggett.

16 THE COURT: Yeah.

17 MS. LUSK: These are the ones where you can only  
18 see part of her face, the ones that show a full view show  
19 it better. And of course, the Polaroids show how clear  
20 her complexion is.

21 THE COURT: Let's take five minutes.

22

23 WHEREUPON, the Court stood in a recess in the  
24 hearing of this case.

1 (Back on the Record)

2

3 THE COURT: It seems to me like there are two  
4 basic issues that I've got to resolve here.

5 The first is the voluntariness, and the second is  
6 relevance. I'm not sure they have to be taken up in that  
7 order, but that's the way I'm going to take them up.

8 In the absence of some indication that the taking  
9 of this statement is unlawful, under the laws of the  
10 State of Ohio, and was unlawful in the manner in which  
11 would require deference by the State of West Virginia,  
12 I don't find anything under the laws of the State of West  
13 Virginia that would invalidate the taking of a statement.

14 With respect to counsel -- and even in the  
15 dispute, Mr. Moss says that the officers weren't told  
16 about him having a lawyer until after he had made a  
17 statement to them. The fact that he had a lawyer in  
18 unrelated proceedings, I don't think, imposes upon the  
19 officers in this case the obligation of refraining from  
20 having some conversation as to what he didn't know about  
21 it.

22 I don't find anything in here that it was  
23 coercive or involuntary, and I would note also, that I  
24 don't know of any law in the State of West Virginia which

1 would prohibit a law enforcement officer from taking  
2 blood exemplars as it was taken in this case. It wasn't  
3 very clean, legally. You might say to yourself, why in  
4 the world would they do this without consulting the  
5 appropriate Ohio authorities, but in West Virginia, it  
6 can be done. And that's not because West Virginia is  
7 possessed of a lot of arcane laws, because there is no  
8 difference in taking a blood exemplar and taking a  
9 photograph.

10 The long and short of that -- I don't find  
11 anything in the nature of the taking of the statement  
12 which would invalidate it constitutionally, under the  
13 laws of West Virginia.

14 The question then, is it relevant in this case?  
15 Probably, more than in any case that I've tried. Before  
16 a case turns on the voracity of the confession and in the  
17 instance of Mr. Moss's confession, the jury is going to  
18 have to evaluate whether his confession is based upon  
19 whether Mr. Moss knew particular facts, that is, facts  
20 particular to this offense, which would indicate that he  
21 is one, or the only one, who could have known those  
22 things. And this evidence, and such evidence, as put  
23 into context -- as you know, I had some reservations  
24 about introduction of the photograph of Vanessa Reggett

929

1 in life, and I don't think that there is much question  
2 that that has a prejudicial effect.

3 I find that there is relevance, and that the  
4 relevance outweighs any prejudicial effect of the  
5 introduction of the photograph of Vanessa Reggettz in  
6 life. I would note that it was also taken a very short  
7 period of time before the -- prior to her death. And  
8 Paul Reggettz has identified that that photograph fairly  
9 represents not only her, but the condition of her  
10 complexion at the time the photograph was taken. So,  
11 I'll allow it.

12 MR. BICKLEY: Please note our objection, your  
13 Honor.

14 THE COURT: Fine.

15 MS. LUSK: Your Honor, also, when we went through  
16 the photographs the other day at the scene, we had pulled  
17 the close-up photographs of Vanessa in favor of the ones  
18 which showed more area within the room. I think at this  
19 point, a closer photograph of Vanessa is relevant to the  
20 case, and I would propose that they can see Exhibit 26.

21 THE COURT: Was Exhibit 26 pulled or not offered  
22 in that preliminary evidence hearing?

23 MS. LUSK: Right.

24 MR. BICKLEY: Your Honor, we object to this

1 photograph being offered, for the same reason we objected  
2 at the time, even before this was considered. We think  
3 it's very prejudicial and they have sufficient  
4 photographs to show Mrs. Reggettz already into evidence,  
5 which we have prepared.

6 THE COURT: Neva, would you do me a favor,  
7 please, and just pull -- go through the photographs you  
8 have there and pull the photograph of Vanessa Reggettz?

9 MS. LUSK: Yes, sir. I would note, also, Judge,  
10 that the photo of Vanessa Reggettz that we have in life,  
11 is State's Exhibit 159.

12 THE COURT: Did your new photograph get washed?  
13 Has it been authenticated?

14 MS. LUSK: Fulks authenticated all ninety-one  
15 photographs that he took, and said that there was one  
16 missing, the one of Sopher and Roark at the back door.

17 THE COURT: I don't see another photograph in  
18 here that precisely depicts the articles Dr. Sopher  
19 referred to. I'm going to let them have them.

20 MR. REVERCOMB: Thank you.

21 THE COURT: Tom, will you get the jury, please?

22 While the jury is being summoned, do you have a  
23 continuing objection to the introduction to Smith's  
24 testimony about the statement that was just referred to?

1 MR. BICKLEY: Yes.

2 THE COURT: The photograph of Vanessa Reggettz in  
3 life and the second conditional photograph of her which  
4 has been identified as State's Exhibit 26 ---

5 MR. BICKLEY: Yes, we had that one out before.  
6 Did you decide to admit it?

7 THE COURT: Yes. And you don't need -- just to  
8 avoid the confusion -- an adverse implication. You won't  
9 have to make an objection now.

10

11 WHEREUPON, the jury entered the Courtroom.

12

13 THE COURT: Come on in.

14 Would you call you next witness, please?

15 MS. LUSK: The State would call Sergeant Michael  
16 Don Smith.

17 THE COURT: The trooper has been previously sworn  
18 to abbreviate the procedure a little bit.

19

20 DIRECT EXAMINATION

21

22 BY MS. LUSK:

23

24 Q Would you state your name, please?



Smith - Direct

932

1 A Michael Don Smith.

2 Q Are you employed?

3 A Yes, I am.

4 Q By whom?

5 A The West Virginia Department of Public  
6 Safety.

7 Q Is that the same thing as the State  
8 Police?

9 A Yes, ma'am.

10 Q How long have you been with the State  
11 Police?

12 A Approximately nineteen years.

13 Q Where are you stationed currently?

14 A Berkeley County, Martinsburg  
15 Detachment.

16 Q Did I ask you how long you have been a  
17 State Policeman?

18 A Approximately nineteen years.

19 Q Have you ever been stationed in Kanawha  
20 County?

21 A Yes.

22 Q When was that?

23 A From 1971 through -- until April of  
24 1980.

Smith - Direct

933

1                   Q           In 1979, the summer of 1979, were you  
2                   stationed in Kanawha County?

3                   A           Yes, at the South Charleston  
4                   Detachment.

5                   Q           Did you become involved in an  
6                   investigation of the Reggettz homicide in December of  
7                   1979?

8                   A           Yes, I did.

9                   Q           Now, when the bodies were discovered,  
10                  Sergeant Smith, on December 13, 1979, were you in the  
11                  house?

12                  A           No.

13                  Q           Did you have occasion on December 14,  
14                  1979 to view a portion of the autopsy of Vanessa  
15                  Reggettz?

16                  A           Yes, I did.

17                  Q           At that time, did you take custody of  
18                  her nightgown, her known blood, and some hand swabs from  
19                  the Medical Examiner?

20                  A           Yes, I did.

21                  Q           Let me hand you at this time, State's  
22                  Exhibit 155, the nightgown, and ask you if this is the  
23                  same nightgown that you took custody of from Dr. Sopher?

24                  A           Yes, it is.

Smith - Direct

934

1 Q What did you do with that, please?

2 A I carried it over to the chemistry lab  
3 at the South Charleston headquarters and turned it over  
4 to their custody.

5 Q What did you do with the blood samples?

6 A It was also turned in at the same time.

7 Q Approximately how long were they in  
8 your possession?

9 A Approximately ten or fifteen minutes.

10 Q Did you change them or alter them in  
11 any way while they were in your possession?

12 A No, I didn't.

13 Q Some time after December 13, 1979, did  
14 you make a check to determine whether the TV show Baretta  
15 had aired at 1:00 o'clock in the morning, and on the  
16 13th, whether the story line was about a contagious  
17 disease or germ?

18 A Yes, I did.

19 Q Was it, in fact?

20 A Yes, it was.

21 Q On February 6, 1980, did you speak with  
22 a woman named Arbutus Johnson?

23 A Yes.

24 Q Did you take an item from her?

Smith - Direct

935

1 A Yes, I did.

2 Q Let me hand you at this time, State's  
3 Exhibit 100, and ask you if you recognize this item?

4 A Yes, I do.

5 Q Would you identify it, please?

6 A That's the item that I received from  
7 Arbutus Johnson on February 6th.

8 Q What did you do with it?

9 A Right after getting it from her, I  
10 turned it over to Trooper Terry Williams.

11 Q How long was it in your possession?

12 A A minute or two.

13 Q Did you change it or alter it in any  
14 manner while you had it in your possession?

15 A No, I didn't.

16 Q Was Trooper Williams with you when you  
17 were speaking with Mrs. Johnson -- when you received the  
18 silverware?

19 A Yes.

20 Q Directing your attention to October the  
21 28th, 1980, Sergeant Smith, did you have occasion to make  
22 a trip to Mansfield, Ohio?

23 A Yes, I did.

24 Q Who were you with?

Smith - Direct

936

1 A Trooper Terry Williams.

2 Q How did you get there?

3 A In a West Virginia State Police car.

4 Q Was it marked or unmarked?

5 A It was an unmarked car.

6 Q On October 28, 1980, were you in  
7 uniform?

8 A No, ma'am.

9 Q Was Trooper Williams in uniform?

10 A No.

11 Q Were you armed?

12 A Yes.

13 Q What were you armed with?

14 A I had a .38 snub nose revolver.

15 Q Where did you have it? Where were you  
16 carrying it?

17 A I carried it -- I had civilian attire  
18 on. I carried it inside my pants. My belt kind of held  
19 it in place. I also had a lightweight jacket on, which  
20 kept it from being in public view.

21 Q Are you aware of whether Trooper  
22 Williams was armed?

23 A Yes, he was.

24 Q Do you know what with?

Smith - Direct

937

1 A With a nine millimeter pistol.

2 Q Was he also wearing civilian clothes?

3 A Yes, he was.

4 Q Did you see his weapon?

5 A He carried his weapon in the same  
6 manner I did. And he also had a lightweight jacket on  
7 which kept the pistol from being revealed to the public.

8 Q Did you take custody of John Moss, III  
9 in Mansfield, Ohio?

10 A Yes.

11 Q While walking to your car with him, was  
12 he handcuffed?

13 A Yes, he was.

14 Q Where?

15 A With the cuffs on his hands, and his  
16 hands were behind his back.

17 Q Once you arrived at the car, did you  
18 change the handcuffing?

19 A Yes.

20 Q How?

21 A We released the cuffs, as far as  
22 letting his hands come to the front. As we placed him  
23 in the back seat of the patrol car, the cuff that had  
24 been on his left hand was placed on the bar of the

Smith - Direct

938

1 headrest.

2 Q Why did you do that?

3 A For security purposes, because we were  
4 still -- we would be leaving town and there would be stop  
5 signs and traffic lights. Also, we were going to stop  
6 and get some gas.

7 Q What kind of locking system did this  
8 cruiser have?

9 A This cruiser had two locks. It had the  
10 passenger's door and the driver's door. You just simply  
11 pull them up or down to release them or to lock them.

12 Q Was it a four-door car?

13 A Yes, it was.

14 Q Did either back seat door have a -- one  
15 of the push knobs on it?

16 A No. The doors in the back could only  
17 be locked or unlocked by these two knobs, on the two  
18 front doors.

19 Q Where were they located on the two  
20 front doors?

21 A Sort of like in most cars, just  
22 directly behind your shoulder. But they could be easily  
23 reached by someone sitting in the back seat just by  
24 pushing up, which would also release the locks on all

Smith - Direct

939

1 four doors.

2 Q So, if the person in the back seat  
3 reached up and pulled up on the knob, it would unlock all  
4 four doors on the car?

5 A Yes, it would.

6 Q Was John Moss able to smoke in that  
7 vehicle?

8 A Yes, he was.

9 Q Did he, in fact, smoke?

10 A Yes.

11 Q Who was driving?

12 A Trooper Williams was.

13 Q Did you have any trouble getting back  
14 on the interstate?

15 A Yes. After we got our gas, while in  
16 town, we had just a little bit of trouble getting back  
17 out onto the interstate, taking us back over to Route 7  
18 which goes south, bringing us back to West Virginia.

19 Q Did you get gas before you left town?

20 A Yes.

21 Q Once you were on the interstate, did  
22 you change the manner in which you had John Moss  
23 handcuffed?

24 A Yes, I did.



Smith - Direct

940

1 Q How did you change it?

2 A I took a handcuff key and unlocked it  
3 from the headrest, and placed it back on his left hand  
4 so that they were both in front at that time; he could  
5 still use both hands to smoke.

6 Q So, both of his hands were handcuffed  
7 to each other, but nothing else?

8 A Correct. One cuff on the right hand  
9 and one cuff on the left hand.

10 Q They were in front of him?

11 A Yes, ma'am.

12 Q Where were you when you changed that  
13 handcuff?

14 A In the front passenger seat.

15 Q Did you turn around and lean over to do  
16 it?

17 A I was able to turn around this way, the  
18 headrest was right here (Indicating), and just released  
19 it. I turned around and placed it back on his left hand.

20 Q You didn't have to get into the back  
21 seat to do that?

22 A No, I didn't have to get into the back  
23 seat to do that.

24 Q About what time did you leave

Smith - Direct

941

1 Mansfield?

2 A Approximately 2:00 or 2:30 p.m.

3 Q Did there come a time when you got into  
4 the back seat of the vehicle?

5 A Yes.

6 Q Approximately how far out of Mansfield  
7 was that?

8 A Approximately fifteen or twenty  
9 minutes.

10 Q Did you take the gun with you into the  
11 back seat?

12 A No, I didn't.

13 Q How did you get into the back seat?

14 A After placing my gun in the glove  
15 compartment of the front seat, or in the front  
16 compartment, there was a little bench that folds up and  
17 down in that area, and I just put that down and stepped  
18 over into the back seat.

19 Q What did you do back there?

20 A I sat down in what would be to John's  
21 left, with him sitting across from me. I told him I'd  
22 like to discuss a matter with him.

23 I told him that the matter concerned a crime  
24 which occurred in West Virginia, and asked him if he

Smith - Direct

942

1 would discuss it with me. And he said he would.

2 Then, after he told me he would discuss it with  
3 me, I told him that before we could discuss it, I would  
4 have to -- I wanted him to be aware of his constitutional  
5 rights.

6 Q Did you advise him of his  
7 constitutional rights?

8 A Yes, I did.

9 Q Let me hand you what has been marked as  
10 State's Exhibit No. 91, and ask you to examine that  
11 exhibit.

12 Can you tell the jury what that is?

13 A That's my I.D. card with my picture, my  
14 name, date of birth, my signature on it.

15 Q Is that the I.D. card that you had in  
16 October of 1980?

17 A Yes, it is.

18 Q What did you do with that?

19 A Well, I carried that in an I.D. folder.  
20 I took that out and told John -- as I said, he would have  
21 to be aware, and I him to understand his rights before  
22 speaking with me concerning that matter.

23 So, on the back of this card, there is the  
24 Miranda Warning which has these rights written down on

Smith - Direct

943

1 it. I took the card and read those rights to John from  
2 the card.

3 Q Would you read them to the jury as you  
4 read them to John Moss on October 28, 1980?

5 A Yes. The card states here the Miranda  
6 Warning. It says:

7 "You have the right to remain silent. If you  
8 agree to answer questions, anything you do say may be  
9 used against you in a Court of Law. You have the right  
10 to consult an attorney before speaking with the Police  
11 and to have an attorney present during any questioning,  
12 now or in the future. If you cannot afford an attorney,  
13 one will be provided for you without cost. If you do not  
14 have an attorney available, you have the right to remain  
15 silent until you have an opportunity to consult with one.

16 "Now that you have been advised of your rights,  
17 are you willing to answer questions without an attorney  
18 present?"

19 Q Did John Moss respond to that question?

20 A After reading that, I asked him, you  
21 know, if he did hear me, and if he understood what I read  
22 to him, and he said he did.

23 I asked him if he was willing to talk with me and  
24 he said yes, he was.

Smith - Direct

944

1 Q Go ahead. What happened?

2 A Well, after telling him that, I said,  
3 "The issue that I'm talking about -- the matter I want  
4 to talk to you about is probably hard to talk about and  
5 it's really even hard for me to begin to explain the  
6 importance and how serious this matter is. And I want  
7 you to think about it, because there is a lot of things  
8 we need to know and some answers we need to get."

9 And I said, "Do you know what I'm talking about?"  
10 At first, he said he didn't know what I was talking  
11 about, and I repeated it again. I said, "Now I want you  
12 to really think about this, because this is," as I said,  
13 "it's very, very serious and it's very important that we  
14 get some answers. That's why I'm trying to talk to you  
15 about it."

16 I said, "What do you think, John?" I said, "You  
17 know why we got your blood, don't you?" When I said  
18 that, John's eyes -- I mean, you could really see an  
19 expression come across his face. His head sort of  
20 dropped, kind of like, well, hey, you know, I've been  
21 had. And I said, "John, you do know what I'm talking  
22 about, don't you?" And he shook his head yes, that he  
23 did.

24 And I said, "Well, I think, then, in order for us

Smith - Direct

945

1 to talk about something like this, that's that serious  
2 and that important, that I don't really think this is the  
3 place. We ought to wait until we get to a place where  
4 we can sit down look each other in the eye and discuss  
5 something as serious -- this serious, other than in the  
6 back seat of this car." I said, "What do you think?"  
7 And he agreed.

8 And I said, "We can talk about it in a little  
9 while when we do get to a place like that." And he  
10 agreed that we could. I said, "Well, until we get to a  
11 place like that, we can just go ahead and talk about  
12 other things." And that's what we did. We just had a  
13 general conversation.

14 We went on down the road until we got into  
15 Parkersburg, West Virginia.

16 Q Did you get back into the front seat?

17 A Yes, approximately ten to fifteen  
18 minutes later after that.

19 Q About how long did this conversation  
20 last?

21 A Approximately five minutes.

22 Q About how long were you in the back  
23 seat?

24 A Total -- after getting into the back

Smith - Direct

946

1 seat, I'd say, thirty-five, forty minutes, probably.

2 Q During the remainder of that time, were  
3 you talking about other matters?

4 A Yes, we were.

5 Q Did John Moss ever indicate to you that  
6 he wanted a lawyer?

7 A No, he didn't.

8 Q Did he ever mention the word lawyer?

9 A No.

10 Q Did he ever mention a lawyer's name?

11 A No.

12 Q Did he ever indicate to you that he was  
13 unwilling to speak with you?

14 A No.

15 Q Did you threaten him in any manner?

16 A No.

17 Q Did you make him any promises?

18 A No.

19 Q Did you strike him in any way?

20 A No.

21 Q Did you make any other stops?

22 A Yes. We stopped for gas in Mansfield,  
23 Ohio, and we stopped, probably somewhere halfway between  
24 Mansfield and Parkersburg at a gas station. We all three

Smith - Direct

947

1 had the opportunity, and did, use the restroom. We got  
2 some drinks and some snacks out of the machines there at  
3 the station.

4 Q That stop you made for gasoline about  
5 halfway, was that before or after you had been in the  
6 back seat?

7 A We stopped for the gasoline in  
8 Mansfield. That second stop was strictly to use the  
9 restroom and to get some drinks, and that was after  
10 getting back up to the front seat.

11 Q When you got back into the car after  
12 using the restroom, did you get into the front seat or  
13 the back seat?

14 A I stayed in the front seat.

15 Q At any time in the car, did you tell  
16 John Moss the facts of the Reggett case?

17 A No.

18 Q Did you mention the word Reggett?

19 A No.

20 Q Did you mention the word murder?

21 A No.

22 Q Did you mention the word homicide?

23 A No.

24 Q Did you make any more stops after you



Smith - Direct

948

1 stopped to go to the restroom?

2 A At Parkersburg, West Virginia.

3 Q Is there a State Police Detachment at  
4 Parkersburg?

5 A Yes.

6 Q Is that the first State Police  
7 Detachment you come to in West Virginia on the Route you  
8 were taking?

9 A Yes, it is.

10 Q Prior to the time you stopped in  
11 Parkersburg, were you in the State of Ohio?

12 A Yes.

13 Q At approximately what time did you  
14 arrive in Parkersburg?

15 A At approximately 6:30 p.m.

16 Q What did you do?

17 A Well, we stopped there. We went in and  
18 made our presence known to the officer that was in charge  
19 there at the detachment, which was Sergeant Presson. He  
20 was the district sergeant in that district.

21 He was on station at that time, and I kind of  
22 advised Presson as to what we were doing -- coming from  
23 Ohio, and that we needed to stop and would like to use  
24 the restroom, and that we would also like to get a room,

Smith - Direct

949

1 as I said earlier, where we could talk and have something  
2 to drink and eat, a more comfortable place to talk to  
3 John. And I kind of briefed him on what we were going  
4 to talk to John about.

5 Q Did you order something to eat?

6 A Yes, we did.

7 Q What happened after you briefed  
8 Sergeant Presson and asked for a room?

9 A Well, he made the arrangements to have  
10 one of the girls who was working there at that detachment  
11 to take our order for food. He set us up with a room  
12 which had a couple of desks and chairs for everybody.  
13 And he also got me some Department of Public Safety  
14 Rights Forms. It's the Miranda Warning, again, but it's  
15 on paper, printed out.

16 Q Did you have any of those forms with  
17 you in the car?

18 A No, we didn't.

19 Q Did you go to the restroom?

20 A Yes, we all three went; myself, Trooper  
21 Williams and John Moss.

22 Q Did Moss go at the same time you did?

23 A No, not all at the same time.

24 Q Where was he when you were in the

Smith - Direct

950

1 restroom?

2 A Sergeant Presson was with him.

3 Q Did you take off John Moss's handcuffs?

4 A Yes.

5 Q Let me hand you what has been marked as  
6 State's Exhibit 92, and ask you if you recognize this  
7 form?

8 A Yes, I do.

9 Q How do you recognize it?

10 A That's the form that I was mentioning.  
11 It's the Department of Public Safety Rights Form. I've  
12 witnessed this form and Trooper Williams was a witness  
13 prior to me, but John Moss had signed it.

14 Q Were you present when the top section  
15 which states the date, place and time was filled in?

16 A Yes, I was.

17 Q Were you present when Trooper Williams  
18 read the top section of the Rights?

19 A Yes.

20 Q Were you able to observe John Moss as  
21 Trooper Williams read him his rights?

22 A Yes, I did.

23 Q Did he appear to be listening?

24 A Yes.

Smith - Direct

951

1 Q Were you present when Trooper Williams  
2 read the Waiver section of the form?

3 A Yes.

4 Q Did John Moss appear to be listening at  
5 that point?

6 A Yes, he did.

7 Q Did John Moss ask any questions  
8 relating to the form?

9 A No.

10 Q Did he state that he understood his  
11 rights and was willing to waive them?

12 A Yes, he did.

13 Q Did he sign this form waiving his right  
14 to remain silent?

15 A He did.

16 Q Were any threats or promises made to  
17 him?

18 A No.

19 Q Did he ask to speak with a lawyer?

20 A No.

21 Q Did he ask -- was this followed by some  
22 questions on this part?

23 A Yes, it was.

24 Q Who was present?

Smith - Direct

952

1 A Trooper Williams.

2 Q And John Moss and you?

3 A Yes, ma'am.

4 Q Who did most of the talking?

5 A I did.

6 Q Did you take any breaks?

7 A Yes.

8 Q About how long did you talk to him?

9 A Probably an hour and a half, covering  
10 the period -- maybe two hours.

11 Q Was food brought in during this period?

12 A Yes.

13 Q Did John Moss eat dinner?

14 A Yes, he did.

15 Q Did you ever inform John Moss of any of  
16 the facts of the Reggett murders?

17 A No.

18 Q How did you start your conversation?

19 A Well, the way it started is sort of the  
20 way it ended in the car. As I said earlier, I was  
21 explaining to him the seriousness of the issue, of the  
22 crime that I wanted to talk to him about that had  
23 occurred in West Virginia.

24 And as it ended in the car, I said that "it was

Smith - Direct

953

1 extremely serious, and like I said, it's really hard to  
2 even begin to explain how serious an issue this is." And  
3 that we'd "already agreed that you were going to talk to  
4 me about it, and that you did know what I was talking  
5 about."

6 And, again, he kind of acknowledged -- shook his  
7 head yes. I said, "Well, I need you to tell me about it  
8 and I really need to know the details, exactly what  
9 happened, why it happened, and how it happened."

10 John's response was, "It just happened."

11 I said, "Well, okay, but tell me how, John." He  
12 said, "It just happened." I said, "We really need to  
13 know why. Would you think about it? We really need to  
14 know why and how?" He said, "Because I got scared." He  
15 said, "It happened because I got scared."

16 I said, "What happened once you got scared?" He  
17 said his blood started rushing. I said, "Well," again,  
18 I said, "we still need to know how this happened." And  
19 he said he was having trouble remembering, and I said,  
20 "Well, I want you to sit there and think about it. Just  
21 take your time and think about it."

22 As I said, when he was in the car earlier, you  
23 could tell he was really trying to appear to be thinking  
24 about what I was asking him about.

Smith - Direct

954

1 I asked him, I said, "You told me it happened  
2 because you got scared," and he agreed again, yes. And  
3 I said, "Do you remember where you were when you first  
4 remember being scared?" And he answered, "On the  
5 tracks." And I said, "Railroad tracks?" And he said,  
6 "Yes." I said, "Was that before or after it happened?"  
7 He said, "After." I said, "Then, did you get scared  
8 before it happened?" And he said that he did.

9 I then said, "Where was that at, or where were  
10 you at?" And he said, "At the door." I said, "Which  
11 door?" And he said, "The back door." I said, "What did  
12 you do at the back door?" He said, "I pushed it in and  
13 went on in."

14 I said, "Who was inside?" He said, "They were."  
15 I either said, "Who was inside?" or "Was anyone inside?"  
16 and he said, "They were." And I said, "Who is they?"  
17 And he said, "The woman and kids."

18 And I said, "What happened then?" He said he  
19 couldn't remember. I said, "You know, back to the same  
20 thing, I want you to really think on it. We really need  
21 to know what happened," and he was sitting there  
22 thinking. I said, "Now, do you remember what happened?"  
23 He said, "I just don't remember." And I said, "Well,  
24 what did you think the next morning?" His answer was,

Smith - Direct

955

1 "It shouldn't have happened." I said, "Why do you say  
2 that?" And he said, "Because of the kids." I said,  
3 "What do you mean by that?" and he said, "Well, they were  
4 so young."

5 And then I asked him, "How did you get there?"  
6 And he said that he had walked from his house where he  
7 had been staying, down the tracks, directly to that  
8 house, and that he went to the back door. I asked him  
9 how he got in and he said he just pushed it open.

10 I said, "What did you do then?" He said, "I went  
11 in and looked around for a while." I asked him why he  
12 had gone there and he said, "To get some money."

13 After telling me that he had looked around for a  
14 while, I said, "Where were they at?"

15 Q Did you ask him why he did this act?

16 A Yes. I asked him that. His answer  
17 was, he just did.

18 Q Did you ask him if he knew whether they  
19 were in there?

20 A Yes, I did, and he said he did know  
21 they were in there.

22 Q Did you ask him what time it might have  
23 been?

24 A Yes, and his initial response to that



Smith - Direct

956

1 was that he really couldn't remember what time it was.

2 Q Did you have any further conversation  
3 at that time?

4 A Yes. I told him, you know, to think  
5 about that, that it's important that we know about the  
6 time, for him to try to remember the time.

7 I asked him some things like, "Think about it.  
8 Do you remember who you were with that day? Do you  
9 remember going anywhere that day?" His answer to both  
10 of those was that he didn't remember being with anybody  
11 that day. He didn't remember going anywhere that day.  
12 This was asked to try to help him remember something  
13 about the time that day.

14 I remember asking him, "Do you remember where you  
15 were just before you went there?" And he said he had  
16 just been listening to the radio. I said, "Do you  
17 remember anything about the radio that would help you  
18 with your memory as far as time?" And he said that  
19 really didn't mean anything as far as remembering, but  
20 just as that was laying on the bed listening to the  
21 radio. I asked him how long he had been listening to the  
22 radio and he said that he didn't know that either. He  
23 just remembers when he was laying in bed listening to the  
24 radio prior to going down to the house.

Smith - Direct

957

1                   Q           Was he ever able to tell you anything  
2                   which gave you an idea of about what time it was, then?

3                   A           Yes. After listening to the radio, he  
4                   said it must have been late, because "When I got home  
5                   after going there this morning, it was almost daylight."

6                   Q           Now, what did he tell you happened  
7                   after he got inside?

8                   A           He said he got inside and was looking  
9                   around. He told me they were in bed. And I said, "Do  
10                  you know where the lady was at the first time you ever  
11                  saw her awake?" And he said -- he told me that she was  
12                  standing near the head of the bed with a gun in her  
13                  hands.

14                  Q           Did he tell you whether there was any  
15                  lights on?

16                  A           I asked John if there were any lights  
17                  on in that house when he went in, and he said that there  
18                  was a light on in the bathroom, and the believed that  
19                  there was a light on in the living room.

20                  Q           Did he say what happened after he saw  
21                  her standing beside the bed with the gun?

22                  A           He said when he saw the woman at the  
23                  bed with the gun, the two of them got into a struggle  
24                  with the gun, and during the struggle, the gun went off.

Smith - Direct

958

1 He said he got the gun from her, he struck her a couple  
2 of times with the gun and knocked her down, and at that  
3 point, he said he ran out the back door of the house.

4 I asked him, "What did you do after you ran out  
5 of the house?"

6 Q Did he ever say whether the gun had  
7 went off?

8 A He said it went off one time.

9 Q One time? Did you ask him whether he  
10 thought anybody was shot?

11 A He said as far as he knew, nobody was  
12 shot.

13 Q Did you ask him which room he was in  
14 when the gun went off?

15 A He said when the gun went off, when  
16 they were struggling with the gun, was in the bedroom and  
17 into the bathroom.

18 Q Now, after he ran outside, what did he  
19 say he did then?

20 A He said he looked back and saw the lady  
21 at the door. She appeared to be trying to do something  
22 at the door -- get something against the door. He ran  
23 back to the door and forced his way back inside.

24 At this time, he had another struggle, and during

Smith - Direct

959

1 this struggle she had a knife in her hand. He made the  
2 motions that she was swinging it at him. He said that  
3 his left little finger had been cut during the struggle  
4 and he showed me a scar, a small scar, on his left finger  
5 -- his left little finger. He said that had occurred  
6 during the struggle with the lady.

7 Q Did he say what happened to the knife?

8 A No. I asked him some questions about  
9 the knife, and he couldn't say anything about the knife  
10 other than that he got it away from her.

11 Q He took it from her?

12 A Yes.

13 Q Did you ask him where the children were  
14 during the struggle?

15 A Yes. He said that there were pushing  
16 and hitting at him, trying to get him to stop, and he  
17 would push them back down away from him.

18 Q Did you ask him what happened after he  
19 got the knife away from her?

20 A He said he knocked her down, took her  
21 and tied her to the door.

22 Q Did you ask him how?

23 A He said he took some cords, used cords,  
24 to hang them around her neck and tie her to the door.

Smith - Direct

960

1 Q Then, what did he do?

2 A He said he got the little boy, and  
3 choked the little boy with his hands and with a cord.  
4 He said he tied his hands up with the cords and put him  
5 in the bathtub of water.

6 Q Did you ask him if he had done anything  
7 else to the mother?

8 A He said that he got a knife or  
9 something and stabbed her in the chest.

10 Q Did you ask him why he had done that?

11 A To make sure she was dead.

12 Q Did you ask him why he put the boy in  
13 the bathtub?

14 A He said it was to make sure he was  
15 dead.

16 Q Did you ask him why he did this?

17 A I asked him why he wanted to kill the  
18 people. Other than being scared, he could give no  
19 reason. He said he just got scared.

20 Q Did you ask him what happened after he  
21 stabbed the woman and put the boy in the tub?

22 A He said he got the little girl and  
23 killed her.

24 Q And killed her?

Smith - Direct

961

1 A And killed her.

2 Q Did you ask him how he killed her?

3 A He said he first choked her. He got  
4 the little girl from the room near the mother and choked  
5 her with his hands, then took a cord and wrapped it  
6 around the little girl's neck and hung her over the door.

7 Q Did you ask him which door?

8 A I asked him to explain how he did that,  
9 which door, and he said the front bedroom door. He took  
10 the cord that he wrapped around her neck and placed that  
11 cord up over top of the door and shoved the door and left  
12 her hanging on the door.

13 Q Which side of the door?

14 A He was asked which side of the door she  
15 was on, and he said she was facing the Christmas tree.

16 Q Did you ask him how he tied the woman  
17 up?

18 A He said that he had taken some cords  
19 and wrapped them around her neck and tied her to the  
20 door.

21 I asked him to explain this to me, how he tied  
22 her to the door. He said there was a hole in this door,  
23 and he said the hole was from where the door handle  
24 should be or a door knob, that somebody had left a hole

Smith - Direct

962

1 in the door. And that's what -- he put the cord through  
2 the hole and tied her up.

3 He was asked which door this was and he said the  
4 door was a bedroom door next to the bathroom.

5 Q Did you ask him if anyone had ever  
6 asked him to break into the house?

7 A Yes, I did.

8 Q And what did he say?

9 A He said he never discussed it with  
10 anyone. That no, nobody had asked him.

11 Q Did you ask him if he knew who lived in  
12 the house before going there that night?

13 A Yes, I did.

14 Q What did he say?

15 A He said Paul and them.

16 Q Did you ask him who Paul was?

17 A Yes.

18 Q What did he say?

19 A His answer was "Paul."

20 Q Did you ask him if they were friends?

21 A Yes.

22 Q What did he say?

23 A He said he just knew him, but they were  
24 not friends.

Smith - Direct

963

1 Q Did you ask him if Paul knew that he  
2 was going to break into the house?

3 A Yes.

4 Q What did he say?

5 A He said, "No, Paul didn't know  
6 anything."

7 Q Did you ask him if Paul had asked him  
8 to break into the house and do something to his family?

9 A Yes, I did ask him that.

10 Q What did he say?

11 A He said no.

12 Q Did you ask him if Paul was at home  
13 that night or in the house?

14 A Yes.

15 Q What did he say?

16 A He said no.

17 Q Did you discuss with him what was taken  
18 from the house?

19 A Yes.

20 Q What did he say?

21 A Well, when I asked him what he took  
22 from the house, his first response -- the first thing he  
23 said he took was a couple of dollars.

24 I said, "Did you get anything else?" and he said,



Smith - Direct

964

1 "No." I told him we knew there were some other things  
2 taken from the house, for him to think about it. He came  
3 back and said that he'd gotten a rifle. I asked him what  
4 type of rifle, and he said it was a .22 rifle.

5 I told him that also we knew that there were some  
6 other things taken, for him to think about it. He told  
7 me then that he had taken a gun from the house, an old  
8 gun. I said, "What do you mean, a little gun?" and he  
9 said, "A pistol." I asked him to describe the pistol and  
10 he said that it was a .22 pistol and that it was a Civil  
11 War color.

12 Q Did you ask him to describe the rifle?

13 A Yes. He described it as a bolt action  
14 .22 with a scope.

15 Q Now, had you checked on the description  
16 of this rifle?

17 A Yes, I did.

18 Q Did the description John Moss gave  
19 match the description that you had?

20 A Yes.

21 Q Did you ask him where the guns were?

22 A Yes.

23 Q What did he say to that?

24 A At first, he didn't remember. Then I

Smith - Direct

965

1 asked him where the gun was that morning in the home, and  
2 he said that he had placed it under the bed there at the  
3 house where he was staying in St. Albans, but he didn't  
4 know where it was at that time. I asked him again about  
5 the pistol and he said that he threw it away. I asked  
6 him why he threw it away, and he said, "Because it was  
7 broken."

8 I asked him how did it get broken, and he said,  
9 "When I hit the lady with it." I asked him where it had  
10 been broken and he said -- he held his hand up, and he  
11 said, "At the back, where you hold it." And of course,  
12 I asked him if he had ever shown these guns to anybody  
13 or if anybody had ever seen them. He said that he had  
14 showed them to no one. I asked him where he threw the  
15 pistol away, and he said that morning after it happened,  
16 he had taken the pistol to school in a paper bag and  
17 threw it away in a large garbage can at school that  
18 morning, and had showed it to no one at the school.

19 Q Did you ask him where the rifle might  
20 be?

21 A Yes.

22 Q What did he say?

23 A He just said that he didn't know. The  
24 last time he remembered was he had placed it there that

Smith - Direct

966

1 morning after it had happened, under the bed there at the  
2 house.

3 Q Now, at that time, Sergeant Smith, did  
4 you leave the room?

5 A Yes.

6 Q Who was left in the room?

7 A Trooper Williams.

8 Q About how long were you gone?

9 A Probably twenty or thirty minutes.

10 Q What happened when you went back into  
11 the room?

12 A When I walked back into the room,  
13 Trooper Williams started speaking to me, and made me  
14 aware of some things that he had learned from John while  
15 I was out.

16 Q What were those things?

17 A Well, he told me that John told him  
18 that he had taken a box of dishes from the house that  
19 night; that he had also taken a camera from the house  
20 that night.

21 Q Prior to the time Trooper Williams told  
22 you he had discussed those things with John Moss, were  
23 you aware that there might have been missing dishes or  
24 gifts from the house?

Smith - Direct

967

1           A           I had no idea that the camera was taken  
2           from the house. I had no idea that any dishes had been  
3           taken from the house.

4           Q           Had you discussed those two things with  
5           John Moss?

6           A           No.

7           Q           You were not aware of those two things  
8           until Trooper Williams told you that John Moss had  
9           discussed them in your absence?

10          A           That's correct.

11          Q           Was there anything else that occurred  
12          in your absence?

13          A           Trooper Williams also told me that John  
14          said that he had noticed Paul's car parked out in front  
15          of the house just prior to going into the house.

16          Q           And you said Paul wasn't there?

17          A           He said Paul wasn't there.

18          Q           Did you ask him where the camera was  
19          that he was talking about?

20          A           Yes.

21          Q           What did he say?

22          A           He said it was at his parents' home in  
23          Cleveland, Ohio.

24          Q           Did you ask him what kind of camera it

Smith - Direct

968

1 was?

2 A He said it was a Polaroid or Kodak.

3 Q Did you again ask him where the rifle  
4 was?

5 A Yes.

6 Q What did he say?

7 A He said that he had taken the rifle to  
8 Cleveland, Ohio with him when he went back, from St.  
9 Albans, just before Christmas, going back to Cleveland.

10 Q Did you ask him if that was together?

11 A Yes, I did.

12 Q What did he say?

13 A He said he had taken it apart and put  
14 it in his luggage when he went back to Cleveland. He  
15 took a screw loose underneath the rifle and took it apart  
16 and he put it in his luggage when he went back to  
17 Cleveland. He carried it that way.

18 Q Were you able to confirm that this type  
19 of rifle does come apart in the manner which John Moss  
20 described?

21 A Yes.

22 Q And it does?

23 A It does.

24 Q Did you ask him where the rifle was?

Smith - Direct

969

1 A After he took it home with him?

2 Q Yes.

3 A He said that he had sold it to a  
4 friend.

5 Q Did he tell you the friend's name?

6 A I told him that -- he first said that  
7 he would like to just -- he felt like he could get the  
8 rifle back and have it brought to his house, and I told  
9 him that it was really important that we get the rifle  
10 back, that we needed to talk to his friend. I told him  
11 as long as we got the rifle back, we could talk with his  
12 friend. The friend wasn't going to get into any trouble,  
13 I didn't think. I didn't think the friend was going to  
14 get into trouble for having the rifle. I told him that  
15 it was extremely important that we get the rifle back.

16 Q Go ahead.

17 A Okay. That's when he said that it was  
18 at the house; that the rifle was there at his parents'  
19 home in Cleveland, at his parents' home in his bedroom  
20 in a closet.

21 Q Did you ask him if he'd shown it to  
22 anyone?

23 A He said, yes, he'd shown it to a  
24 brother that he has by the name of Carl, that Carl had

Smith - Direct

970

1 seen the rifle there at the house.

2 Q Did you ask him if it was together or  
3 broken down?

4 A He said the rifle had been put back  
5 together, but he didn't believe that the scope was on it.

6 Q Did you ask him the last location he  
7 remembered seeing the camera?

8 A He said it was on top of a dresser in  
9 his bedroom.

10 Q What was his parents' address?

11 A I asked him his parents' address, and  
12 he said it was 1725 Zoeder Avenue.

13 Q Was that accurate?

14 A Yes.

15 Q Did you ask him his parents' names?

16 A Yes. He said his father's name was  
17 John and that his mother's name was Marcy.

18 Q Was that accurate?

19 A Yes.

20 Q Did you ask him if he took any other  
21 dishes or gifts from the home?

22 A He was asked about that. He said that  
23 the dishes that he'd taken from the house that night had  
24 been a Christmas gift, that they'd been under a tree and

Smith - Direct

971

1 been wrapped up, that he'd took this gift and that it was  
2 the only gift he took from the house, that he later gave  
3 this gift, that same gift, after he had rewrapped it.

4 I said, "Did you rewrap this gift or did someone  
5 else rewrap it before giving it away?" He said that he  
6 was the one who had rewrapped it, and that the took it,  
7 then, and gave it as a Christmas gift to Arbutus Moss.

8 Q Arbutus Johnson?

9 A Yes, I'm sorry, Arbutus Johnson.

10 Q Did she have some relationship to him?

11 A He had a best friend by the name of  
12 Bill Johnson, and that was his answer. "I gave it to my  
13 best friend's mother."

14 Q Did you ask him her name?

15 A Yes.

16 Q And his response?

17 A His response was Mrs. Johnson. He  
18 didn't say the first name, he just said Mrs. Johnson.

19 Q Did you have any discussion with him  
20 about his clothes or blood?

21 A Yes. I asked him to try to remember  
22 about his clothing, what he was wearing. He said that  
23 he didn't remember whether he wore gloves that night or  
24 not, but that he did have blood on his clothing, that no



Smith - Direct

972

1 one saw his clothing as far as seeing blood on it, that  
2 he had taken his clothing himself and washed it himself.

3 Q Did you have an occasion to ask John  
4 Moss if he thought Vanessa Reggettz was pretty?

5 A Yes.

6 Q What did he do?

7 A He took his hand and motioned in the  
8 area of the chin and lower cheeks, and his answer was  
9 that he thought she had bumps.

10 Q Now, you viewed a portion of her  
11 autopsy; is that correct?

12 A Yes.

13 Q During the time of her autopsy, did it  
14 look like she had bumps?

15 A She had spots on her face that appeared  
16 to be like acne or facial blemishes. There was a lot of  
17 spots.

18 Q Now, after you had this conversation  
19 with John Moss, did you make arrangements with Sergeant  
20 Presson to take a taped statement?

21 A Yes, I did.

22 Q Were you present when John Moss was  
23 read his rights for the third time that day?

24 A No.

Smith - Direct

973

1 Q Were you present when the taped  
2 statement was taken?

3 A No.

4 Q After the taped statement was taken,  
5 did you go back to Cleveland with Trooper Williams?

6 A Well, we didn't go back to Cleveland.  
7 We had come from Mansfield to Parkersburg.

8 Q And then you went to Cleveland?

9 A After we went to Parkersburg that  
10 night, we went to Cleveland, Ohio.

11 Q Did you obtain a search warrant for  
12 John Moss's parents' home?

13 A Yes, we did.

14 Q While you were there, were you able to  
15 locate the rifle?

16 A No.

17 Q Did you make some kind of arrangement  
18 with Charleston?

19 A I made arrangements through one of my  
20 superiors for us to have permission to go to Cleveland.

21 Q After you got there and you couldn't  
22 find the rifle, though, did you make a phone call back  
23 to Charleston?

24 A Yes, I did.

Smith - Direct

974

1 Q Who was that to?

2 A An Assistant Prosecutor with the  
3 Kanawha County Court system here. The Prosecutor's name  
4 was Chuck Pettry or Charles Pettry.

5 Q And did Mr. Pettry make arrangements to  
6 have John Moss speak to you on the telephone?

7 A Yes, he did.

8 Q Was it your testimony that he was  
9 advised of his rights before talking on the telephone?

10 A Yes. I advised him.

11 Q What conversation did you have with him  
12 on the phone?

13 A The reason I had Mr. Pettry do this was  
14 so that -- we were searching the house up there, and  
15 at the time, we had not found the camera in the house,  
16 and we had not found the gun. John had told me earlier  
17 that the camera was supposed to have been on top of the  
18 dresser in his bedroom and the gun was supposed to have  
19 been in his closet next to his bedroom, so I wanted to  
20 make sure that we were looking in the right bedroom, the  
21 right dresser, and had the right closet. So, that's what  
22 the phone call was about.

23 And in talking with John, he was telling me that  
24 I was looking -- that we were looking in the right

Smith - Direct

975

1 bedroom, that we had the right closet. I even further  
2 verified this by having him talk to his mother, to make  
3 sure we were in the right location.

4 I gave the phone to Marcy Moss and asked her to  
5 talk with him to make sure that we were in the right  
6 location, and of course, she got on the phone and talked  
7 with him.

8 Q How was John Moss's voice when you were  
9 on the telephone with him?

10 A I'd say John's voice was much the same  
11 as it had been the evening and day before.

12 Q Was he cooperative?

13 A Yes.

14 Q Did he ever indicate to you that he did  
15 not want to talk to you?

16 A No. He seemed real sincere and real  
17 concerned about wanting to help us locate those items at  
18 that time.

19 Q Did he express any unwillingness to  
20 cooperate or to give this information to you?

21 A No, he didn't.

22 Q Was his attitude about the same as it  
23 was on the previous day?

24 A It was just exactly the same;

Smith - Direct

976

1 cooperative and sincere.

2 Q Now, you say you handed the telephone  
3 to his mother?

4 A Yes.

5 Q Did he mother have a conversation with  
6 him?

7 A Yes, she did.

8 Q Was she cooperative as well?

9 A Yes, she was.

10 Q Were you able to recover the rifle?

11 A No.

12 Q Corporal Smith, have you ever had a  
13 complaint filed against you with the Department of Public  
14 Safety?

15 A No.

16 Q Have you ever been subject to an  
17 Internal Affairs investigation as a result of some  
18 complaint of excessive force or brutality?

19 A No, I haven't.

20 Q Have you ever been disciplined by the  
21 Department of Public Safety?

22 A Yes, I have.

23 Q What were you disciplined for?

24 A There was one disciplinary action that

Smith - Direct

977

1 I received, which was concerning the fact that I had let  
2 a prisoner escape from my custody.

3 Q Have you received promotions?

4 A Yes.

5 Q What were your prior ranks?

6 A When I was stationed down here in this  
7 area of Kanawha County, in the Kanawha Valley, I was a  
8 Trooper, then I was sent to C Company, which is in my  
9 area now, the eastern panhandle, and I received a  
10 promotion over there to Trooper First Class.

11 From Trooper First Class to Corporal, then to  
12 Sergeant.

13 Q What is your present position?

14 A My present position is that I'm  
15 Assistant Detachment Commander at the Martinsburg  
16 Detachment, which is in Berkeley County. It has fifteen  
17 men working for that station.

18 Q What was your position previous to  
19 that?

20 A I was the Detachment Commander and also  
21 the Assistant to the District Sergeant for the Fourth  
22 District of C Company, which has four counties in it.

23 Q How did you know that the description  
24 of the rifle that John Moss gave fit the description of

Smith - Direct

978

1 the .22 rifle?

2 A We obtained a sales receipt from where  
3 Mr. Reggett had purchased the rifle, at the Heck's store  
4 in St. Albans.

5 The sales receipt showed it to be that model, a  
6 bolt action .22 rifle.

7 Q The John Moss that confessed to you in  
8 Parkersburg, is he present in the Courtroom today?

9 A Yes.

10 Q Would you point him out, please?

11 A He is sitting here in the brown pants  
12 at the table to the right of Mr. Bickley's left.

13 MS. LUSK: May the record reflect that the  
14 witness had identified the defendant.

15 THE COURT: It is so noted.

16 MS. LUSK: That's all I have right now.

17

18 CROSS-EXAMINATION

19

20 BY MR. BICKLEY:

21

22 Q Trooper Smith, you have a reputation of  
23 having a quick temper; is that correct?

24 A I've never been told that.

Smith - Cross

979

1 Q Now, coming back from Mansfield was  
2 just yourself and Trooper Williams and Mr. Moss; is that  
3 correct?

4 A Yes, sir.

5 Q So, it's Mr. Moss's word against you  
6 and Trooper Williams?

7 A Yes.

8 Q Now, if I understand correctly, you  
9 read him his Miranda Rights after you crawled into the  
10 back seat?

11 A Yes, sir.

12 Q And was it your belief that he could  
13 not hear the Miranda Rights if you remained in the front  
14 seat?

15 A No, I wouldn't say that was my belief.

16 Q Then, you crawled into the back seat  
17 for a different reason; would that be a true statement?

18 A Yes.

19 Q And that reason is to soften him up for  
20 the eventual conversation in Parkersburg; isn't that  
21 true?

22 A No, sir.

23 Q Say that again?

24 A No, sir.



Smith - Cross

980

1 Q It's not true?

2 A I wouldn't say to soften him up.

3 Q Would you tell the jury that you didn't  
4 hit him?

5 A If I did sir, I would, but I didn't.

6 Q Okay. Now, is it also true that once  
7 you got to Parkersburg, did you not hit him on his leg  
8 as he was getting out of the sedan?

9 A I hit John Moss at no time ever.

10 Q Did there come a time when John Moss's  
11 memory wasn't too good, that he was basically having a  
12 memory problem, and Trooper Williams indicated that he  
13 would step out for about five or ten minutes and leave  
14 him with you. And then when Trooper Williams came back,  
15 his memory had improved immeasurably?

16 A There was a time Trooper Williams left  
17 the proceedings.

18 Q But during the time before he left,  
19 John was having a little problem remembering and  
20 retaining those facts that you were giving him; is that  
21 correct?

22 A I wasn't giving him any facts.

23 Trooper Williams left the area where John was  
24 saying that it just happened.

Smith - Cross

981

1 Q And when Trooper Williams returned, Mr.  
2 Moss -- miraculously now, his memory was pretty good?  
3 Is that correct?

4 A John was just getting to the point, I  
5 think, where, you know, in the beginning -- saying I  
6 remember going there.

7 Q And is it not true that John had  
8 rehearsed, if you will, for two hours, I believe you  
9 testified, two hours of oral conversation, if you will,  
10 or oral confession with John prior to the electronic  
11 taping?

12 A I talked to John probably an hour or an  
13 hour and a half, but I wouldn't call it a rehearsal.

14 Q But you discussed the confession, the  
15 material for the confession was discussed in this hour  
16 and a half; wasn't it?

17 A Yes.

18 Q Now, Trooper Reggett -- or excuse me,  
19 Trooper Smith, are you familiar with the Reggett  
20 confession?

21 A Yes.

22 Q And you are familiar with the details  
23 of his confession?

24 A Yes.

Smith - Cross

982

1                   Q           In fact, you and the chief  
2                   investigating officer -- or were you, in fact, the chief  
3                   investigating officer in this case?

4                   A           I would say one of two, myself and  
5                   Trooper Williams.

6                   Q           And Trooper Williams?

7                   A           Yes.

8                   Q           So, you knew the details. You had been  
9                   to the scene of the crime?

10                  A           Yes, I had been to the scene of the  
11                  crime, a lot later.

12                  Q           You did not get there when the bodies  
13                  were there?

14                  A           No, sir.

15                  Q           But you were familiar that Mr. Reggett  
16                  had confessed in some detail about these murders?

17                  A           Yes.

18                  Q           And you were aware of the different  
19                  positions of the body in his confession?

20                  A           I was aware of how he had -- what he  
21                  said he did with those people -- I beg your pardon?

22                  Q           You are aware of what Mr. Reggett said  
23                  he did to his family?

24                  A           Yes, sir.

Smith - Cross

983

1 Q So, you had that knowledge when you  
2 talked to Mr. Moss; is that correct?

3 A Yes.

4 Q Now, did you beat up on Mr. Reggettz to  
5 get his confession?

6 A No, sir.

7 Q Then, were you there when he was giving  
8 his confession?

9 A I was in the office. I wasn't present  
10 when he was giving his confession, to be able to hear it  
11 or anything like that.

12 Q Did you talk to him about the  
13 allegations? Did you talk to Mr. Reggettz when he was  
14 at the detachment?

15 A Yes, I did.

16 Q Did it appear that anyone was harassing  
17 him?

18 A No, sir.

19 Q Did it appear that he was shaken and  
20 upset?

21 A No, sir. Not the times I viewed him,  
22 no.

23 Q So, from outward appearances, Reggettz  
24 appeared normal when you saw him at the detachment?

Smith - Cross

984

1 A Yes.

2 Q Now, isn't it true that at one time,  
3 Mr. Moss did not want to talk to you all?

4 A There was no time that Mr. Moss didn't  
5 want to talk to us.

6 Q Now, Trooper Smith, wasn't there an  
7 occasion, in fact, along the period we're talking,  
8 November 7, 1979, you received a letter from Corporal  
9 Cook in reference to his believing that you were not  
10 being all that you should be as a trooper? Do you recall  
11 that?

12 A Receiving a letter?

13 Q A letter from Corporal Cook, to which  
14 you responded back on November 15, 1979?

15 A I don't remember the letter as to what  
16 you're wording, no.

17 Q Did you receive a letter, a copy -- let  
18 me show you the letter.

19 Let me ask the question differently. Did you  
20 receive -- or did that letter come to your attention,  
21 sir?

22 A Yeah, I saw this letter, but I couldn't  
23 tell you -- I think was probably a lot later than what  
24 the letter is dated, because that letter is not to me.

Smith - Cross

985

1 Q I know, but did you receive a copy,  
2 because you responded to the letter?

3 A Oh, yeah, but it was a lot later than  
4 what this letter is dated.

5 Q I understand that you were privileged  
6 to see the letter complaining about your conduct?

7 A Yes.

8 Q Would you read the contents of that  
9 letter, please?

10 MS. LUSK: Objection. May we approach?

11 THE COURT: Yes.

12

13 WHEREUPON, a bench conference was held and the  
14 following transpired:

15

16 MS. LUSK: We saw you take it out.

17 THE COURT: How many have you got?

18 MR. BICKLEY: How many letters? I have his  
19 response to that letter.

20 THE COURT: I mean, all told?

21 MR. BICKLEY: How many letters I have?

22 THE COURT: Out of the personnel file, how many  
23 do you have?

24 MR. BICKLEY: Of the letters?

Smith - Cross

986

1 THE COURT: Anything.

2 MR. BICKLEY: That's all I have. That's all we  
3 pulled out.

4 MR. HUFFMAN: There's other matters in there that  
5 relate to that, but that's the only one we've got.

6 THE COURT: I simply asked because I want to  
7 review them all at the same time.

8 MR. BICKLEY: Do you want his response?

9 THE COURT: Yes. But let's go ahead and take a  
10 lunch break.

11 Ladies and gentlemen, we're going to recess until  
12 1:30. You may be excused until that time.

13

14 WHEREUPON, the Jury was excused for a lunch  
15 recess in the hearing of this case.

16

17 WHEREUPON, the bench conference resumed as  
18 follows:

19

20 MS. LUSK: I think this opens up all of the good  
21 evaluations.

22 THE COURT: What?

23 MS. LUSK: There are a lot of good evaluations.

24 THE COURT: What's this for?

Smith - Cross

987

1 MR. BICKLEY: It was irrelevant until they opened  
2 it. I don't know why they opened it.

3 THE COURT: You could have objected; couldn't  
4 you?

5 MR. BICKLEY: Yeah, I had rebuttal.

6 THE COURT: I know. What if she said, now, let  
7 me ask you, did you ever beat your wife? And he said,  
8 I've never done it in my life. Would you be entitled to  
9 put on evidence that he had beat his wife?

10 MR. BICKLEY: If I could do it, I think.

11 THE COURT: That's collateral. I think it's  
12 collateral. I don't think this is -- this doesn't have  
13 anything to do with voracity; does it?

14 MR. HUFFMAN: Sure, it does. It says right in  
15 there that he told the Trooper he denied he said what he  
16 said.

17 MR. BICKLEY: It has a lot to do with voracity.

18 THE COURT: Do you mean because there was ---

19 MR. HUFFMAN: Apparently, there was a verbal  
20 confrontation between ---

21 THE COURT: Because this says something different  
22 than what he says?

23 MR. BICKLEY: He says, if you tell anybody, I'll  
24 deny it.



Smith - Cross

988

1 MR. REVERCOMB: That was in dispute, your Honor,  
2 that's not a false statement.

3 MR. BICKLEY: If you hadn't brought the character  
4 up, we weren't going to put anything in the record.

5 MS. LUSK: Judge, if you do consider admitting  
6 this, I think we should be able to present all of the  
7 good evaluations he has in the file, also.

8 THE COURT: I'll tell you after lunch.

9 We'll all come back at 1:30.

10 MR. BICKLEY: Your Honor, we withdraw the letter.

11 THE COURT: You withdraw the letter?

12 MR. BICKLEY: Yes, sir.

13 THE COURT: Okay. Do you want to make that  
14 announcement when your client is brought out?

15 MR. BICKLEY: Yes, I'd better do that.

16 MR. REVERCOMB: Your Honor ---

17 THE COURT: Can we elicit how much was heard  
18 about that letter?

19 MR. BICKLEY: They didn't hear anything.

20 MR. REVERCOMB: You mentioned the letter.

21 THE COURT: It's obvious to me that the letter  
22 was critical. I'll just tell the Jury that it has been  
23 withdrawn and that they are not to consider it favorably  
24 or unfavorably in this case to anyone.

Smith - Cross

989

1 WHEREUPON, the Court stood in a recess in the  
2 hearing of this case.

3

4 (Back on the Record)

5

6 THE COURT: Welcome back. Mr. Bickley, are you  
7 ready to pick back up?

8

9 CROSS-EXAMINATION

10 (Continued)

11

12 BY MR. BICKLEY:

13

14 Q Your Honor, I withdraw the letter that  
15 was previously submitted and I have no further questions.

16

17 THE COURT: Members of the jury, right before the  
18 recess at lunch time, there was a letter tendered and a  
19 couple of questions asked about it.

20 I want you to forget any questions asked or any  
21 answers given. The letter should not be considered  
22 favorably or unfavorably to anyone in this case.

23

24

Smith - Redirect

990

1

REDIRECT EXAMINATION

2

3

BY MS. LUSK:

4

5

Q Sergeant Smith, why did you get in the

6

back seat of the cruiser on the way to Charleston?

7

A Well, it's like I stated earlier, it

8

was to have a talk with him. It was real awkward to

9

turn around and really keep eye contact, and to hear

10

exactly what he was saying.

11

When you are moving out on the road like that --

12

and I'm just a little bit hard of hearing -- and I

13

stepped over into the back to make sure that he could

14

hear me and that I could also hear him and have to eye

15

contact.

16

Q Now, Mr. Bickley asked you if you saw

17

Paul Reggett at the South Charleston Detachment on

18

December 13, 1979?

19

A Yes, he did.

20

Q Do you know what time Mr. Reggett

21

arrived at the detachment?

22

A I'm thinking -- I would say

23

approximately 1:30 p.m. in the afternoon.

24

Q Are you aware of his being advised of

Smith - Redirect

991

1 his rights?

2 A I was made aware of the fact that he  
3 had been advised of his rights.

4 Q Was that early?

5 A It was some time in the afternoon, yes.

6 Q What time did you talk with him?

7 A I talked with Mr. Reggett, maybe  
8 around 7:30 p.m.

9 Q Now, he stated that you were asking him  
10 questions, quickly firing questions at him. Is that  
11 true?

12 A I would not say they were rapid  
13 questions, but I asked him a lot of questions.

14 Q Were you aware that he had confessed  
15 there at the detachment?

16 A Later that next morning.

17 Q Do you know what time that was?

18 A It was probably 3:00 or 4:00 a.m.,  
19 maybe.

20 Q Did you go to the house with them the  
21 next morning?

22 A I didn't go into the house. I was in  
23 the area, but I wasn't in the house.

24 Q What time was that?

Smith - Redirect

992

1           A           I would say approximately 8:00 or 8:30  
2           a.m.

3           MS. LUSK: That's all I have, Judge.

4           MR. BICKLEY: No further questions.

5           THE COURT: Thank you, sir. You may step down.  
6           Are you all ready to do the view?

7           MS. LUSK: Yes.

8           MR. BICKLEY: Yes, your Honor.

9           THE COURT: Ladies and gentlemen, we're going to  
10          -- we've got a bus outside and we're all going to get in  
11          buses and our cars and drive down to the site.

12          There is something that I want to tell you about  
13          a view. A view is not a place where you can take any  
14          evidence. We're not going to have a Court Reporter  
15          present, and there is not going to be anybody testify.  
16          If you have questions, I'm going to let you ask those  
17          questions of me, and if I can answer them and they can  
18          be agreed to by counsel, I'll do it. Otherwise, the  
19          purpose isn't so much to get evidence or testimony, but  
20          to give you the opportunity just to look around, in light  
21          of the testimony which you've heard in this case.

22          It's going to take us about five minutes to get  
23          ready to go, so if you all want to go on back to the Jury  
24          Lounge, one of the Bailiffs will come pick you up and

1 escort you downstairs in about five minutes.

2

3 WHEREUPON, the Jury was escorted by the Court on  
4 a view of the scene of the crime.

5

6 (Back on the Record after the view of the scene,  
7 out of the hearing of the jury)

8

9 MR. REVERCOMB: Your Honor, we'd like to put on  
10 the record some of the things that we observed at the  
11 view.

12 THE COURT: Let me see if I can at least give it  
13 a start.

14 We have just returned from a view taken of the  
15 premises of the events which occurred in this case, or  
16 gave rise to this case.

17 Initially, I think it's appropriate to note that  
18 I asked the Deputies who had the defendant in custody to  
19 be sure that they did not transport him in a manner which  
20 would indicate to the jury that he was in custody, and  
21 to accomplish that, I asked my Bailiff, who was attending  
22 the jury to hold them up for about ten minutes. We got  
23 there probably almost ten full minutes in advance of the  
24 jury, and by the time counsel and I got there, the

1 defendant and two officers were just pulling in. He had  
2 a chance to alight from the car and we assembled and  
3 discussed very briefly what both sides wanted me to show  
4 the jury. And thereafter we went into the house  
5 ourselves.

6 By agreement, we brought the jury up and pointed  
7 out the house, the location of the house; the location  
8 of Chesterfield -- Chesapeake Avenue; the railroad track;  
9 Fortson's house; and another house adjacent to the  
10 Reggett home.

11 We then separated the jury into two groups of  
12 seven each, because of the limited space inside of the  
13 house. And by agreement, I simply pointed out each of  
14 the rooms, those being: the kitchen, a room which is  
15 characterized as being the TV room, the front and rear  
16 bedrooms, and the bathroom which is attached to the rear  
17 bedroom, and the living room.

18 In addition, I pointed out to the jurors the  
19 addition of a closet in the back bedroom, and of some  
20 general things about the fact that the house had been  
21 remodeled, the location of the bar, the location of the  
22 television and the location of the Christmas tree in the  
23 house.

24 I instructed them that if they had questions,

1 they could ask those questions. I would then confer with  
2 counsel to determine if there was an agreed or stipulated  
3 response. And in the instance of virtually every  
4 question that was asked, we had either an agreement to  
5 a simple answer to be given to the jury, or agreement  
6 that the jury should not be given any answer whatsoever.

7 So far as I am able to determine, I heard  
8 objections from neither the State nor the defendant  
9 regarding the conduct of the view itself. One very  
10 disconcerting part of this case was the fact that a local  
11 news person approached the defendant with a microphone  
12 and asked him if he did this crime, or committed the  
13 murders, or something in that general line of inquiry.  
14 He answered "No", or "I did not", or something of this  
15 response.

16 I instructed the members of the media to stay  
17 clear of both the defendant and the jurors thereafter.  
18 They were relative obedient to that instruction.

19 Now, is there anything, Steve, that you would  
20 like to add to that?

21 MR. REVERCOMB: Yes, just a couple of things to  
22 go into more detail.

23 In the TV room, I believe you pointed out that  
24 -- about the testimony that we had had about the lack of



1 outlets. And I pointed those out, the fact that the  
2 walls had been paneled, the bathroom had been remodeled.  
3 You pointed out that there was a door that separated the  
4 front bedroom from the living room, and the front door  
5 was where the fireplace had been.

6 You pointed out, I think in response to a  
7 question, I believe, the duration of the -- John Moss's  
8 -- or where John Moss's grandfather's house was. You  
9 directed them as to Gene's Motel and told the jury of the  
10 A&W Rootbeer site. I believe the other questions were,  
11 we agreed, that they would have to rely on the testimony.

12 I'd like to point out that the defendant at no  
13 time was handcuffed down there in the presence of the  
14 jury. They never saw him in the car or in the full  
15 custody of a Deputy. He wasn't seen entering or exiting  
16 the car.

17 I guess I'd like for the defense to stipulate to  
18 this.

19 THE COURT: Yes. Nelson, is that an accurate  
20 characterization?

21 MR. BICKLEY: It is, your Honor.

22 THE COURT: I might add that at all times we had  
23 the jury doing anything, I made every effort I could to  
24 make sure that Mr. Moss was there, and that Tim -- Mr.

1 Huffman was with us, as well as Mr. Bickley.

2 Mr. Moss, was there anything down there that went  
3 on with that jury that you weren't present for?

4 THE DEFENDANT: I was present at all times, your  
5 Honor.

6 THE COURT: Have we fairly characterized what  
7 went on, Mr. Bickley?

8 MR. BICKLEY: You have.

9 THE COURT: Obviously, -- very well. Okay, Tom,  
10 bring the jury in.

11

12 (Back on the Record with the jury present)

13

14 WHEREUPON, Charles E. Pettry, Jr. was duly sworn,  
15 and upon his oath deposed as follows:

16

17 THE COURT: Ladies and gentlemen, Mr. Pettry has  
18 already been sworn. I think I might make one  
19 observation to you. I've told all of you on a couple of  
20 occasions that you would have a chance to compare what  
21 you saw down there with the photographs.

22 Just in case you're not really in on what we know  
23 about the photographs, there are a number of photographs  
24 that you probably have watched that have been marked and

998

1 have been given to the Reporter or the Clerk. Those  
2 photographs correspond to the slides which you've seen.  
3 Basically, what happened is, we had a picture made and  
4 then had a slide made from the photograph. All of those  
5 pictures which are admitted into evidence in this case  
6 will be given to you to take to the Jury Room to look at  
7 at the time you deliberate in the case.

8

9

## DIRECT EXAMINATION

10

11 BY MS. LUSK:

12

13 Q Would you state your name, please?

14 A Charles Pettry.

15 Q Are you employed?

16 A Yes, ma'am. I'm an attorney. I  
17 practice here in Charleston.

18 Q You are self-employed?

19 A I have a firm, Goodwin and Pettry.

20 Q Prior to the private practice of law,  
21 did you hold any other employment?22 A Yes, ma'am. I was an Assistant  
23 Prosecuting Attorney for Kanawha County in 1978 and 1979  
24 and 1980.

Pettry - Direct

999

1 Q So, in October of 1980, you were an  
2 Assistant Prosecuting Attorney for Kanawha County?

3 A Yes, ma'am.

4 Q Had you worked on the case in the  
5 Reggettz homicides?

6 A Yes, ma'am.

7 Q Did there come a time, Mr. Pettry, on  
8 October the 29th, 1980, when you received a telephone  
9 call from Cleveland, Ohio, from Trooper Mike Smith?

10 A Yes, ma'am.

11 Q And as a result of that telephone call,  
12 did you make arrangements for John Moss, III to speak to  
13 Trooper Smith on the telephone?

14 A Yes, ma'am, I did.

15 Q Now, prior to handing Mr. Moss the  
16 telephone, did you advise him of any of his  
17 constitutional rights?

18 A Yes, ma'am, I did. I wasn't sure that  
19 I needed to, but out of an abundance of caution, I went  
20 ahead and gave him what the Police call the Miranda  
21 Warning, and told him what his rights were; what he could  
22 do and what he didn't have to do if he didn't want to.

23 Q Go ahead.

24 A I told him, first of all, that he

Pettry - Direct

1000

1 didn't have to speak to Trooper Smith, and that he didn't  
2 have to talk to me, either, but that if he did talk to  
3 Trooper Smith or to me, or particularly to Trooper Smith,  
4 anything he said might be used against him in a  
5 Courtroom.

6 I also told him that if he wanted to speak with  
7 an attorney, he could do so. If he didn't have one at  
8 that point, also, I think he did -- that one would be  
9 appointed for him.

10 Q Did you threaten him in any manner?

11 A No, ma'am.

12 Q Did you make any promises to him?

13 A No.

14 Q Did he indicate to you that he wanted  
15 to talk to a lawyer?

16 A No.

17 Q You weren't wearing any kind of  
18 uniform; were you?

19 A No; the same kind of uniform I have on  
20 today, a suit and tie.

21 Q Were you armed?

22 A No, ma'am.

23 Q What was John Moss's attitude?

24 A He seemed cooperative. He didn't -- he

Pettry - Direct

1001

1 was cooperative is the best way to describe it.

2 Q Did you hear him talk on the telephone?

3 A Yes, ma'am, I was right there.

4 Q What happened?

5 A Well, as I recall, when Mike Smith  
6 called me, I was in the Prosecutor's office, in the old  
7 Prosecutor's office.

8 We went down to the Jail and I had Mr. Moss -- we  
9 were up on the third floor, out in the main waiting area  
10 there at the Jail. And I called, as I recall, Mike  
11 Smith, at a number he had given me to call. I called him  
12 back in Cleveland and talked to Mike and told him that  
13 John was on the phone here with me and wanted to speak  
14 with him, and I handed him the phone.

15 Then I heard Mr. Moss's half of the conversation  
16 with Trooper Smith.

17 Q What did you hear?

18 A Well, I heard him talk about telling  
19 him that there was -- as I recall, there was a gun, a  
20 rifle, a .22 rifle, and a camera that they were talking  
21 about. And he told Mike -- he told Trooper Smith to look  
22 upstairs in the closet, I think, to the best of my  
23 recollection. And he also talked to his mother.

24 Q Did he tell them, with regard to the

Pettry - Direct

1002

1 rifle, that another family member might know where it  
2 was?

3 MR. HUFFMAN: Excuse me, Judge. She is leading  
4 the witness.

5 THE COURT: Sustained.

6  
7 BY MS. LUSK:

8  
9 Q Do you want to go ahead and answer now?  
10 Did he tell them anything else with regard to the rifle?

11 A He told Mike, and I think he also told  
12 his mother, that if it wasn't up there, to ask Carlton  
13 where it was, that Carlton might know where it was. And  
14 I understood at that point that Carlton was his brother.

15 Q How do you know he talked to his  
16 mother?

17 A Well, at that point, or at one point,  
18 I heard -- there was a pause, and it seemed to me that  
19 someone else got on the phone just from the pause. And  
20 he said, "Hi, Mom" or "Hi, Mama" or words to that effect.

21 So that suggested very clearly to me that he was  
22 talking to his mother. He told her -- he said, "I'm  
23 okay. I'm all right," or something like that.

24 Now, he told her basically the same thing he said

Pettry - Direct

1003

1 to Mike. He said, "Tell them to look up in the closet,  
2 and if they can't find it, to have Carlton -- see if  
3 Carlton knows where it is." As generally speaking, it  
4 was words to that effect.

5 Q He indicated to his mother that he was  
6 okay?

7 A Yes, ma'am.

8 Q Did he make any complaints to you?

9 A No.

10 Q When you were speaking of the  
11 conversation, that they were looking for something in the  
12 closet, did you know what they were talking about?

13 A I thought they were talking about the  
14 .22 rifle. There was a rifle, I think a .22, and a  
15 camera, I think it was one of those little Instamatic  
16 cameras, or something like that.

17 But at that point, it was the subject of the  
18 investigation.

19 Q At any time, was he uncooperative?

20 A No.

21 Q No complaints?

22 A No.

23 Q So he was okay?

24 A Yes, ma'am.



Pettry - Direct

1004

1 Q Is the John Moss, III that you  
2 overheard this conversation here within this Courtroom  
3 today?

4 A Yes, ma'am.

5 Q Would you point him out for the jurors,  
6 please?

7 A He is sitting next to Mr. Bickley there  
8 at counsel table.

9 MS. LUSK: May the record reflect that the  
10 witness has identified the defendant.

11 That's all I have.

12

13 CROSS-EXAMINATION

14

15 BY MR. BICKLEY:

16

17 Q Your name is Charles Pettry; is that  
18 correct?

19 A Yes, sir.

20 Q Are you commonly known as Chuck Pettry?

21 A Yes, sir.

22 Q And you're more commonly known as Chuck  
23 Pettry than Charles Pettry; I take it?

24 A Right.

Pettry - Cross

1005

1 Q Now, you say you worked on the Reggett  
2 case as an assignment when you were in the Prosecutor's  
3 office; is that right?

4 A That's right.

5 Q And you weren't at Parkersburg when the  
6 confessions were obtained from John Moss; were you?

7 A No.

8 Q So, you don't know what went on at  
9 Parkersburg; do you?

10 A I don't have any idea.

11 Q But you were, on occasion, at the  
12 headquarters of the State Police when the confession was  
13 taken from Paul Reggett?

14 A I was in and around headquarters that  
15 evening.

16 Q And did you, while you were in and out,  
17 did you have an opportunity to observe Mr. Reggett?

18 A From time to time.

19 Q Did you at any time see the Police work  
20 him over?

21 A Work him over?

22 Q Yes, sir.

23 A No, sir.

24 Q Did you, at any time, see Mr. Reggett

Pettry - Cross

1006

1 -- did you see anyone put a gun to his head or anything  
2 of that nature?

3 A I never saw anything like that, no.

4 Q Was there any indication that the  
5 confession by -- obtained from Mr. Reggettz was by  
6 someone putting words in his mouth?

7 A Was there what?

8 Q Was there any indication ---

9 MS. LUSK: I'm going to object to this, Judge.  
10 He said he wasn't present when the statement was taken.

11 MR. BICKLEY: I was going to ask him on both  
12 questions -- or, I mean occasions. I thought that was  
13 pretty clear.

14 THE COURT: I'll allow the question.

15

16 BY MR. BICKLEY:

17

18 Q Chuck -- Mr. Pettry, I'm only talking  
19 about the occasions when you had the opportunity to  
20 observe Mr. Reggettz?

21 A Yes, sir.

22 Q And during those occasions, was anyone  
23 trying to force-feed Mr. Reggettz with the facts of the  
24 case?

Pettry - Cross

1007

1 A No.

2 Q Or tell him how he committed the  
3 crimes?

4 A No. Let me explain very briefly, if I  
5 might. I was at Company B headquarters, and as I recall,  
6 they questioned Mr. Reggettz in a particular room. I was  
7 only in that room once or twice. I was in and around the  
8 area.

9 I was attempting, as it turned out  
10 unsuccessfully, to not make myself a witness in the case,  
11 just in case I would be the Prosecutor. I didn't want  
12 to be a witness. So, I was there, available, for  
13 questions about legal issues that might come up, and if  
14 they came up. And that was basically my function there.

15 I wasn't there as an interrogator, so my  
16 involvement in the interrogation was peripheral.

17 Q Did you go to the scene of the crime?

18 A The next day?

19 Q The next day, with Mr. Reggettz?

20 A No, I had been there the day it  
21 happened, so I did not go back the next day.

22 Q Was Mr. Reggettz there the day it  
23 happened, when you were there?

24 A Yes, sir.

Pettry - Cross

1008

1 Q He was there?

2 A He was there in a Police car when I  
3 arrived.

4 Q Were you and him in the home at the  
5 same time?

6 A I don't think so.

7 Q So, on the one occasion or two  
8 occasions that you observed Mr. Reggett at the Police  
9 Detachment, for all intents and purposes he was normal,  
10 or what-have-you; that is, he didn't give the appearance  
11 of having been "worked over" by the Police?

12 A He didn't appear to have been worked  
13 over. He was distraught, as you might expect. He didn't  
14 look like he had just come back from Disneyland, or  
15 anything. But he was upset.

16 I don't know if that answers your question or  
17 not, Mr. Bickley.

18 Q Did you, during the time while you were  
19 outside, did you hear any officers say, "Let us have  
20 him."

21 A "Let us have it?"

22 Q "Let us have him."

23 A No.

24 MR. BICKLEY: No further questions.

Pettry - Redirect

1009

REDIRECT EXAMINATION

1

2

3 BY MS. LUSK:

4

5 Q Mr. Pettry, of the twenty-one or  
6 twenty-two hours that Paul Reggett was at the South  
7 Charleston Detachment, or in the custody of the Police,  
8 how much of that time were you with him?

9 A Probably an hour.

10 Q During the rest of that time, were you  
11 on the same floor that he was?

12 A Probably not. As I recall, I think the  
13 room was in the basement, and I was not in the basement,  
14 I was up in the main area, as you walk in, the ground  
15 level area as you come in from the parking lot.

16 And I spent a lot of time with another Trooper  
17 going through Mr. Reggett's vehicle. That took us  
18 several hours.

19 Q You didn't find anything in his  
20 vehicle; did you?

21 A No. Well, we found things, but nothing  
22 significant.

23 Q Nothing that you kept?

24 A No, nothing that we kept.

Pettry - Redirect

1010

1 Q What were you looking for?

2 A We didn't know, which made the search  
3 a little more difficult. We were just looking around to  
4 see if we saw anything that might turn out to be  
5 important from an investigative standpoint.

6 Q And you didn't take anything out of the  
7 car?

8 A No, there was nothing significant in  
9 the car.

10 MS. LUSK: I have nothing further.

11 MR. BICKLEY: Nothing further.

12 THE COURT: You may be excused.

13 Is that your last witness for the day?

14 MS. LUSK: Yes.

15 THE COURT: Will your first witness be available  
16 at 9:00 o'clock on Monday?

17 MR. REVERCOMB: Yes, sir.

18 THE COURT: Folks, we're going to release you  
19 now. I thought we would be a little bit earlier, but  
20 we're doing okay.

21 First, I want to apologize for that crowd of news  
22 people. They've got a job and we have our jobs, and  
23 they, frankly, were pretty well behaved.

24 I thank you also for your attention out there,

1011

1 but I do want to make, again, as forcefully and as  
2 completely as I can, the point that it is absolutely and  
3 terribly important that you don't watch -- I know it  
4 seems like I'm treating you like a bunch of children, and  
5 I apologize for that, I really don't mean it that way at  
6 all. It's just important enough for me to remind you  
7 -- don't watch any of the news or read any of the papers,  
8 and enjoy yourselves otherwise.

9 See you Monday morning at 9:00 o'clock.

10

11 WHEREUPON, the jury was excused for the weekend  
12 recess in the hearing of this case.

13

14 (Back on the Record)

15

16 THE COURT: Do we need to do anything before we  
17 quit today?

18 MS. LUSK: I don't think so.

19 THE COURT: Let me ask that you bring in your  
20 substantive material on Monday. I will provide you,  
21 hopefully the first thing Monday morning, with a copy of  
22 my basic charge.

23 And what I intend to do Monday is finishing up  
24 the evidence and trying to window dress it in that



1012

1 fashion. I think we ought to be able to put together a  
2 charge in this case that is relatively free of objections  
3 from anybody. It seems to me that the instructions  
4 should be relatively straight-forward in this case.

5 MR. BICKLEY: I think so. There may be -- I may  
6 fashion a unique instruction which I think will be able to  
7 be used in this case, according to the law.

8 I have to get to my office pretty quick because  
9 my secretaries get out of there, and we also have the  
10 instructions that were used the last time. But they look  
11 like boilerplates; I don't see any need for new  
12 instructions in there.

13 THE COURT: The case has had a few twists and  
14 turns but nothing that has to do with the law.

15 See you on Monday.

16 MR. BICKLEY: All right, your Honor.

17

18

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, to-wit:

I, Connie L. Cooke, Official Reporter for the Circuit Court of Kanawha County, do hereby certify that the foregoing is a true and correct transcript of the proceedings had and reported in the matter of the State of West Virginia versus John Moss, Jr., aka John Moss, III, upon action number 82-F-221, as stated in the caption hereto, had on the 20th day of April, 1990, during the May 1990 Term of said Court, as reported by me and transcribed into the English language.

I hereby certify that the transcript within meets the requirements of the Code of the State of West Virginia, 51-7-4, and all rules pertaining thereto as promulgated by the Supreme Court of Appeals.

Given under my hand this 13th day of July, 1990.

*Connie L. Cooke*

Official Reporter

1 IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2  
3  
4 STATE OF WEST VIRGINIA

5  
6  
7 vs.

Action No. 82-F-221

8  
9  
10 JOHN MOSS, JR., aka JOHN MOSS, III

11  
12  
13 BEFORE: Hon. A. Andrew MacQueen, Judge

14 Day 6

15  
16 APPEARANCES

17  
18 For the State: Neva Lusk and Stephen Revercomb,  
19 Assistant Prosecuting Attorneys for Kanawha County.

20 For the Defendant: The Defendant, in person, and  
21 by Nelson R. Bickley, Timothy N. Huffman, and Kathy  
22 Beckett, his counsel.

23  
24 Connie L. Cooke

25 Official Reporter

JAN 23 1990

## WITNESSES FOR THE PLAINTIFF

		D	X	RD	RX
1					
2					
3					
4	1) Trooper Terry Williams	425	590	612	619
5	2) Scott Leasure	625	630		
6	3) John Fulks	631			
7	4) Joe Dean Jarrell	635	640		
8	5) William D. Estep	643			
9	6) Lt. Clarence Ralph Lane	650	654		
10	7) Paul Reggett	661	735	762	764
11	8) Trooper Robert R. Custer	767	779	781	
12	9) Sgt. R. L. Presson	782	796	798	
13	10) Irvin R. Sopher, M.D.	799	864	865	
14	11) Paul Fortson	870			
15	12) Arbutus Johnson Pomeroy	896	903	905	
16	13) Michael D. Smith (In Camera)	907	913		
17	14) John Moss (In Camera)	917	919	914	
18	15) Michael Don Smith	931	978		
19	16) Charles E. Pettry, Jr.	997	1004	1009	
20	17) Lt. David H. Shumate	1021	1045		
21	18) Fred S. Zain	1048	1053		
22	and	1065	1125	1135	1137
23					
24					

## WITNESSES FOR DEFENDANT

1

2

3

D X RD RX

4

5

1) Alexander Fortson

1164 1173

6

2) Willie James Moss

1179 1187 1191 1192

7

3) John Moss, Jr.

1193

8

4) John C. Wideman

1202 1204

9

5) Trooper Howard Woodyard

1208 1222 1233 1234

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1015

1 BE IT REMEMBERED, that on Monday, the 23rd day of  
2 April, 1990, during the January 1990 Term of said Court,  
3 in the matter of the State of West Virginia versus John  
4 Moss, Jr., aka John Moss, III, Action No. 82-F-221, as  
5 stated in the caption hereto, the following  
6 transpired:

7

8 WHEREUPON, a bench conference was held, and the  
9 following transpired:

10

11 MR. BICKLEY: The next witness is Mr. Shumate,  
12 Trooper Shumate, and we'd like a motion in limine on the  
13 gloves.

14 He mentioned something about the gloves were  
15 smudged, which he can't identify to our defendant, but  
16 I believe that testimony was based primarily on the  
17 October 30th confession, which was thrown out by the  
18 Supreme Court.

19 So, there is no need to bring up the gloves, in  
20 our opinion. It doesn't indicate to John, but it leaves  
21 a strong inference which is prejudicial.

22 THE COURT: Is that the only statement in which  
23 he indicated that he used gloves?

24 MR. BICKLEY: The other one said he did not

1016

1 remember, or something like that, in another statement,  
2 but he did in the October 30th statement, yes.

3 MR. REVERCOMB: Your Honor, under Rule 72, his  
4 testimony was as to trier of facts, and I would argue  
5 that he does have expertise in seeing glove prints, he's  
6 familiar with them over the years.

7 As a print examiner, he can describe them. He  
8 now reports that he has tests that can recognize glove  
9 prints.

10 THE COURT: He reports them out?

11 MR. REVERCOMB: Uh-huh, he says he can't compare  
12 a glove print to a glove, but he can compare glove prints  
13 to each other, and he can recognize what a glove print  
14 is. That's what Shumate will say.

15 THE COURT: What does it prove in this case?

16 MR. REVERCOMB: One thing is to prove, of course  
17 -- if we have to prove that Paul Reggett didn't commit  
18 this, for one thing, our arguments, of course, will be  
19 that Mr. Reggett didn't put gloves on with an argument  
20 with his wife, to murder those people.

21 And second, one of the glove prints was found in  
22 a glove consistent with that of the defendant.

23 MR. BICKLEY: One glove print?

24 MR. REVERCOMB: Yes, on the wrapping paper. It's

1017

1 found, and it is consistent with that of the defendant.

2 THE COURT: You mean that the glove print is  
3 consistent with that of the defendant?

4 MR. REVERCOMB: Right.

5 THE COURT: Does he identify the prints?

6 MR. REVERCOMB: The glove prints, your Honor?

7 THE COURT: No, fingerprints -- anybody's?

8 MR. REVERCOMB: Yeah, there are fingerprints  
9 found in the house, but so are Reggett's.

10 MR. BICKLEY: Reggett's are identified.

11 THE COURT: And there are no unidentified  
12 fingerprints?

13 MR. REVERCOMB: There are a lot of unidentified  
14 prints.

15 THE COURT: I mean clear fingerprints that are  
16 unidentified as to the person?

17 MR. REVERCOMB: Yes, there are. But, you know,  
18 they are not John Moss's. He had John Moss's prints.  
19 No prints of John Moss, the defendant, were found in the  
20 house.

21 He will testify that the impression of the glove  
22 prints, or prints from gloves, were found on the  
23 scissors, on Vanessa Reggett's body, on the knife  
24 handle, on the door that Vanessa Reggett was tied to,



1018

1 on a handkerchief box under the tree, on the wrapping  
2 paper that has blood consistent with the defendant's, and  
3 on the flatware box that Arbutus Johnson got from him.

4 THE COURT: Is he able to say that those are the  
5 same glove prints?

6 MR. REVERCOMB: He officially compared them to  
7 him and they were the same.

8 MR. BICKLEY: He will also acknowledge, your  
9 Honor, that he has no scientific expertise, other than  
10 to say that they are glove prints. He cannot say that  
11 they are the same glove prints; even he will admit that.  
12 He admitted it at that time.

13 THE COURT: And is his expertise better since the  
14 last trial?

15 MR. REVERCOMB: Your Honor, he'll say that  
16 they're glove prints. He doesn't compare glove print to  
17 glove print except visually.

18 And as a matter of fact, he does have more  
19 expertise now, because he does see them daily in his  
20 work. He examines these things, and has in all sorts of  
21 cases.

22 MR. BICKLEY: I don't find that probative, your  
23 Honor. It's very prejudicial. The glove prints are  
24 indicative that they are glove prints. They trace

1 nothing to Mr. Moss.

2 THE COURT: Wait a minute, wait a minute. What  
3 about the impression that's left after -- however,  
4 though, if he gets on the stand and testifies that your  
5 client's prints weren't found anywhere in the house, and  
6 you get up and argue that as a piece of exculpatory  
7 evidence ---

8 MR. HUFFMAN: It is exculpatory evidence, Judge.  
9 His prints weren't found in the house.

10 THE COURT: I understand that, but at least the  
11 State has an explanation about why your client's prints  
12 aren't there.

13 MR. HUFFMAN: There could be multiple  
14 explanations for things drawn out of the middle of mid-  
15 air. There is just no evidence to support that.

16 THE COURT: That's the difference between this  
17 evidence and the evidence -- I mean, he isn't just  
18 manufacturing something. Lord knows, he could have been  
19 wearing gloves, but now he'd got somebody to testify that  
20 the prints were ---

21 MR. BICKLEY: They can't have it both ways.  
22 Either he was bleeding like a stuck hog all over the  
23 place, or he had gloves on, or conceivably both.

24 THE COURT: It seems to be a matter of argument.

1 I'm going to allow the witness to testify.

2 MR. BICKLEY: You are?

3 THE COURT: Yeah.

4 MR. BICKLEY: Will you note my objection?

5 THE COURT: Sure.

6 MR. REVERCOMB: Thank you, your Honor.

7

8 WHEREUPON, the bench conference was concluded.

9

10 (Back on the Record)

11

12 THE COURT: Sally, will you go get the jury,  
13 please?

14

15 (With jury present)

16

17 THE COURT: Good morning.

18 Okay, we're ready to pick up where we left off.

19 Call your next witness, please.

20 MR. REVERCOMB: Yes, your Honor.

21 The State would call David Shumate.

22

23 WHEREUPON, David H. Shumate was duly sworn, and  
24 upon his oath, deposed as follows:

Shumate - Direct

1021

1 DIRECT EXAMINATION

2

3 BY MR. REVERCOMB:

4

5 Q Would you please state your name, sir?

6 A David H. Shumate.

7 Q Where are you employed?

8 A I'm employed by the West Virginia  
9 Department of Public Safety in the Criminal  
10 Identification Bureau at our headquarters at South  
11 Charleston, West Virginia.

12 Q In what capacity?

13 A I'm a latent fingerprint examiner. I'm  
14 supervisor of the latent section.

15 Q What is your rank?

16 A I hold the rank of First Lieutenant.

17 Q How long have you been a First  
18 Lieutenant?

19 A For over seventeen years.

20 Q What training have you received in the  
21 field of fingerprints?

22 A I was employed by the FBI in  
23 Washington, D.C. as a fingerprint identification clerk.  
24 At that time, I attended and completed a fingerprint

Shumate - Direct

1022

1 identification school. I've attended and completed the  
2 Case Western Reserve University latent fingerprint  
3 school. I've attend and completed the FBI administrative  
4 latent fingerprint school, along with a latent  
5 fingerprint photography school.

6 I hold certification through the International  
7 Association of Board Certification as a Certified Latent  
8 Fingerprint Examiner.

9 Q Have you ever testified as an expert in  
10 other Courts around the state?

11 A I have testified in forty-six counties  
12 in the state of West Virginia, and in federal Court in  
13 several locations in the state of West Virginia. Also,  
14 I've testified in Circuit Courts in the state of Florida.

15 Q You have testified in the Circuit Court  
16 of Kanawha County before?

17 A Yes, numerous times.

18 Q About how many latent print  
19 examinations would you estimate that you've done in your  
20 career?

21 A Thousands of examinations.

22 MR. REVERCOMB: Your Honor, I would ask the Court  
23 to acknowledge Lieutenant Shumate as an expert witness  
24 in latent fingerprint examination.

Shumate - Direct

1023

1 THE COURT: Why don't you all come up here for  
2 just a second.

3

4 WHEREUPON, a bench conference was held, and the  
5 following transpired:

6

7 THE COURT: I'm going to let you go into his --  
8 any fingerprints -- you're going to have to develop an  
9 independent foundation for it, though.

10 MR. REVERCOMB: Fine.

11

12 WHEREUPON, the bench conference was concluded.

13

14 (Back on the Record)

15

16 BY MR. REVERCOMB:

17

18 Q First, Lieutenant Shumate, would you  
19 tell us what a latent fingerprint is?

20 A A latent fingerprint, by definition, is  
21 the imprint that has to be developed. We have several  
22 ways of developing fingerprints: Through the powder  
23 crush method, which is seen a lot. Also, there are  
24 chemicals that can develop fingerprints on paper and

Shumate - Direct

1024

1 unfinished things such as this.

2 It's an outline of prints and ridges on the palms  
3 of the hands or the soles of the feet, whichever, that  
4 is left in perspiration, or can be left upon a porous  
5 substance.

6 Q And what is an inked or known  
7 fingerprint?

8 A An inked or known fingerprint is one  
9 that occurs where printer's ink is placed on the finger  
10 or palms of the hands or whatever, then the finger is  
11 rolled onto a background card that contrasts with the  
12 black ink -- a white card, making a permanent record of  
13 how those ridges appear on the finger.

14 Q And what is meant by lifting a  
15 fingerprint?

16 A Lifting fingerprints is where you take  
17 fingerprint powder -- a powder designed specifically for  
18 this purpose. We have usually a black or a white powder  
19 which is most generally used.

20 This powder is placed on a brush and then dusted  
21 over a surface that you're attempting to develop prints  
22 on. The moisture in the fingerprint will collect the  
23 powder, or the powder adheres to the moisture in the  
24 fingerprint, making the print visible to you.

Shumate - Direct

1025

1           Then, after the print is visible, you take a wide  
2       variety of scotch tapes, one of which we call fingerprint  
3       tape, and place it over top of that print on the object.  
4       The powder then adheres to the adhesive on the tape. You  
5       then place it onto a background that contrasts, again,  
6       with the powder.

7           Again, if you're using a black powder, then you  
8       would use a white card; or, you would use a black  
9       background if you were using a white powder. That makes  
10      a permanent record of how that print appeared as it was  
11      developed on that object.

12           Q           Could you explain to the jury what a  
13      smudge is?

14           A           The majority of the time, as you place  
15      your hands on an object, you don't just place them down  
16      flat, then lift them straight up. You will twist your  
17      hands or slide your hands on it when you grip the object.  
18      Most of the prints that you leave on an object would be  
19      smudges. The majority of the prints that you would leave  
20      would be smudges, because of the twisting and turning,  
21      or a lot of other factors, such as how much perspiration  
22      you might have on your hands.

23           If you wiped them against another object prior to  
24      touching the second object, then you would have less of



Shumate - Direct

1026

1 a chance of leaving a print. But the majority of the  
2 time you leave smudges and smears.

3 Q Is an entire print needed for a  
4 picture?

5 A No. We made identifications with  
6 fractions of fingerprints, a third or a fourth of a  
7 fingerprint, depending on how many characteristics are  
8 present in that print.

9 Q In doing your work, Lieutenant Shumate,  
10 do you wear anything on your hands?

11 A When using fingerprint powders or  
12 chemicals, I wear gloves, for two reasons. One, to keep  
13 the chemicals and powders off my hands. Also, to keep  
14 from leaving my prints on those objects that I'm  
15 processing.

16 Q When you go back over the work you've  
17 examined, do you come across your own glove prints?

18 A Yes, sir.

19 MR. BICKLEY: Your Honor, may we approach the  
20 bench?

21 THE COURT: Yes.

22

23 WHEREUPON, there was a bench conference, and the  
24 following transpired:

Shumate - Direct

1027

1 MR. BICKLEY: My objection here is he's just  
2 testified that he's an expert at fingerprinting, to which  
3 I have no objection.

4 Now, from the testimony, he's admitting that  
5 gloves, which he's not an expert in, but he still gets  
6 it in, leaving the impression to the jury that he is an  
7 expert in glove printing.

8 THE COURT: He's got to establish a foundation.

9 MR. REVERCOMB: That's what I'm trying to do.

10 MR. BICKLEY: I'm just saying that at some point  
11 he's got to say that he has no more expertise than the  
12 jury does in glove printing.

13 MR. REVERCOMB: But ---

14 THE COURT: That's fine.

15

16 WHEREUPON, the bench conference was concluded.

17

18 (Back on the Record)

19

20 BY MR. REVERCOMB:

21

22 Q Lieutenant Shumate, I believe when you  
23 come across -- when you're examining objects, you come  
24 across your own glove prints?

Shumate -- Direct

1028

1 A Yes.

2 Q Do you know what they look like?

3 A Yes, I do.

4 Q In your work, do you ever come across  
5 other glove prints?

6 A Yes. In processing the prints, and  
7 also in the evidence that has been submitted to me on  
8 numerous occasions, I've developed glove prints on  
9 objects.

10 Q What do glove prints look like?

11 A A glove print would look like a  
12 fingerprint. It would have the outline of some part of  
13 the hand or finger or whatever, but instead of having the  
14 ridged detail that the fingerprint has, you would see a  
15 fabric weave, a symmetrical pattern in that print, rather  
16 than the ridge print, the ridges of the normal  
17 fingerprint.

18 Q Where do you look for glove prints and  
19 where do you usually find them?

20 A In the processing that we do, it's in  
21 places or on objects where it's thought that the  
22 perpetrator of a crime might have touched the objects or  
23 were placed at the crime scene. So, when we're trying  
24 to develop the perpetrator's prints, we look where

Shumate - Direct

1029

1 they're likely to be developed.

2 Q So, you would look where you would  
3 expect to find fingerprints?

4 A That's correct.

5 MR. REVERCOMB: Your Honor, can we approach the  
6 bench?

7 THE COURT: Yes.

8  
9 WHEREUPON, a bench conference was held, and the  
10 following transpired:

11  
12 MR. REVERCOMB: Your Honor, I would like to refer  
13 you to Rule 702. Your Honor, he is testifying that in  
14 his work he has come across glove prints that were found  
15 in places that you would expect to find fingerprints.  
16 He is testifying as to what they look like. I would say  
17 that his expertise over the years as a State Trooper is  
18 beyond that of a normal lay person, and can assist the  
19 trier of facts in this case.

20 I think we ought to show that he has -- that as  
21 an expert, that he has more knowledge than the lay  
22 person.

23 MR. BICKLEY: His knowledge is recently found,  
24 because in his prior testimony, he had absolutely no

Shumate - Direct

1030

1 expertise in this and could not make a comparison between  
2 the gloves, and he cannot testify ---

3 THE COURT: I don't understand. Is he going to  
4 testify that he is able to make a comparison? I  
5 understand that he is just going to testify that there  
6 are different prints made by gloves?

7 MR. REVERCOMB: That's right.

8 MR. BICKLEY: But he is giving the impression  
9 that he has expert knowledge. Anybody can identify  
10 gloves. But he is saying that he has special knowledge  
11 of glove prints, which did not exist before. He has just  
12 seen glove prints. He cannot tell you that the glove  
13 print here, and another glove print over there ---

14 THE COURT: Isn't that like a doctor identifying  
15 a print of a knuckle or the ridge of a knuckle of  
16 somebody's body, and say that it was a strong hand as  
17 opposed to being struck by somebody else or something  
18 else?

19 If I understand correctly, all he's going to be  
20 able to testify to is that the prints on various objects  
21 around the house were made by gloves.

22 MR. REVERCOMB: And they were in six locations.  
23 And we have evidence that we can visually compare and  
24 find them to be similar in shape to his.

Shumate - Direct

1031

1 MR. BICKLEY: Your Honor, he is making a  
2 comparison. You cannot do that in the last trial.

3 MR. REVERCOMB: That's not true. He compared,  
4 visually, the two glove prints. He can compare a glove  
5 to a glove.

6 MS. LUSK: He can say only a glove made this  
7 glove print. He may not have been asked to do that.

8 MR. BICKLEY: He's saying he can make a  
9 comparison of glove prints, though. He said ---

10 MS. LUSK: That's true. He can't say this is  
11 definitely a certain glove print.

12 THE COURT: I'll save your objection, but -- and  
13 I'm going to give you an opportunity to cross-examine  
14 him, if you want to.

15

16 WHEREUPON, the bench conference was concluded.

17

18 (Back on the Record)

19

20 BY MR. REVERCOMB:

21

22 Q Lieutenant Shumate, I would like to  
23 call your attention to December 13, 1979, and ask you if  
24 you recall at that time being at the scene of a triple

Shumate - Direct

1032

1 murder?

2 A Yes, I was.

3 Q Was that in St. Albans?

4 A Yes, it was.

5 Q What time did you arrive?

6 A Approximately 1:00 p.m.

7 Q How long were you there?

8 A Until about 8:00 or 9:00 o'clock that  
9 evening.

10 Q Was there any other lab people there  
11 with you?

12 A There was John Fulks, the photographer  
13 at that time. Also, Fred Zain out of our serology  
14 department.

15 Q What is the protocol at a crime scene  
16 such as this, with you and Trooper Zain and Lieutenant  
17 Fulks?

18 A The photographer would go through first  
19 and photograph the scene as it was found. And then, the  
20 serologist and myself would work the crime scene, sort  
21 of together. We'd look at some of the same objects and  
22 process the scene.

23 Q Was Trooper Zain there with you all  
24 day?

Shumate - Direct

1033

1 A Yes, he was.

2 Q All right, Lieutenant Shumate, I'm  
3 going to have you what has been marked for identification  
4 purposes as State's Exhibit 158.

5 Have you seen this exhibit before?

6 A Yes. This is a pair of scissors that  
7 Trooper Zain retrieved at the scene, and then released  
8 to me.

9 Q He released them to you at that time?

10 A Right, on December 13, 1979.

11 Q And you took this back to the lab, and  
12 what did you do with it at that point?

13 A I photographed it, and then further  
14 processed it with fingerprint powder.

15 Q Into whose custody did you return it  
16 to?

17 A I returned it to Trooper Williams on  
18 January 23, 1980.

19 Q I will now hand you what has been  
20 marked for identification purposes as State's Exhibit 99,  
21 and ask you to examine this, and tell us what this is?

22 A It's a children's dish set that I  
23 obtained at the scene on December 13, 1979. It was  
24 transferred to Trooper Williams on January 23, 1980.



Shumate - Direct

1034

1 Q And while this was in your care,  
2 custody and control, what was done with it?

3 A It was processed and fingerprinted.

4 Q I would now hand you what has been  
5 marked for identification purposes as State's Exhibit  
6 101.

7 Have you seen this exhibit before?

8 A Yes. I obtained this at the crime  
9 scene on December 13, 1979, and transferred it to Trooper  
10 Williams on January 23, 1980.

11 Q And did you process this exhibit for  
12 fingerprints?

13 A Yes, I did. I processed it and  
14 photographed it.

15 Q I now hand you what has been marked for  
16 identification purposes as State's Exhibit 106.

17 Would you identify this exhibit, please?

18 A It is a lantern obtained from the scene  
19 on December 13, 1979, and later released to Trooper Zain  
20 on February 18, 1979.

21 Q February 18th or December 18th?

22 A I mean December 18th. I'm sorry.

23 Q And while this was in your care,  
24 custody and control, did you process it for prints?

Shumate - Direct

1035

1 A Yes, I did.

2 Q I now show you what has been marked for  
3 identification purposes as State's Exhibit 105, and ask  
4 you if you have seen this exhibit before?

5 A Yes. It's a vacuum cleaner and cord  
6 that I obtained from the crime scene on December 13,  
7 1979, and released to Trooper Williams on January 23,  
8 1980.

9 Q What is this black powder that is on  
10 this exhibit?

11 A That is fingerprint powder.

12 Q And that was done by you at the lab?

13 A That's correct.

14 Q I now hand you what has been marked for  
15 identification purposes as State's Exhibit 107. I'd ask  
16 you to examine that, and tell the jury what this exhibit  
17 consists of?

18 A It is a bowl that I obtained from the  
19 scene.

20 Q How do you recognize this exhibit?

21 A It has my case number and my initials  
22 on it; my case number being L 10660, and my initials,  
23 D/S.

24 Q Does it have anyone else's initials on

Shumate - Direct

1036

1 it?

2 A Yes, it does. It has another case  
3 number and the initials, F/S/Z.

4 Q Do you know whose those are?

5 A Those are Trooper Zain's initials.

6 Q Did you give this exhibit to Trooper  
7 Zain after you were through with it?

8 A Yes, I'm sure I did, but I can't  
9 determine exactly when I gave it to him.

10 Q I hand you now what has been marked for  
11 identification purposes as State's Exhibit 127, and ask  
12 you if you've seen this exhibit before?

13 A Yes. This is the radio that I obtained  
14 from the crime scene on December 13, 1979, and later  
15 turned over to Trooper Williams on January 23, 1980.

16 Q What is this black powder?

17 A That is fingerprint powder.

18 Q That was done by you in the lab?

19 A That's correct.

20 Q Other than putting fingerprint powder  
21 on this exhibit, did you alter or change it in any way?

22 A No, I did not.

23 Q Did you change the time setting or the  
24 dial setting?

Shumate - Direct

1037

1 A No, I did not.

2 Q I now hand you what has been marked for  
3 identification purposes as State's Exhibit 157, and ask  
4 you to identify this exhibit?

5 A It's a box of handkerchiefs that I  
6 obtained from the scene on December 13, 1979, and later  
7 turned over to Trooper Williams on January 23, 1980.

8 Q This is State's Exhibit 100. Would you  
9 identify that, Lieutenant Shumate?

10 A It is a box of stainless steel flatware  
11 that was delivered to me by Trooper Williams on February  
12 6, 1980, which I released to Trooper Zain on February 6,  
13 1980.

14 Q You gave it to him the same day?

15 A That's correct.

16 Q I now hand you what has been marked for  
17 identification purposes as State's Exhibit 114, and ask  
18 you to open that up and tell us what that is?

19 A It's Christmas wrapping paper that I  
20 obtained at the scene on December 13, 1979, and delivered  
21 to Trooper Zain on December 18, 1979.

22 Q I call your attention to Item 127, the  
23 clock radio. In your analysis, did you find any  
24 identifiable fingerprints on that exhibit?

Shumate - Direct

1038

1           A           There were three identifiable latent  
2 fingerprints on the clock radio.

3           Q           Whose were they?

4           A           One belonged to Paul Reggett. The  
5 other two were not identified.

6           Q           In the course of your investigation in  
7 this case, did you receive the known fingerprints of Paul  
8 Reggett?

9           A           Yes, I did.

10          Q           Were the victims, Vanessa Reggett and  
11 Paul Eric Reggett and Bernadette Reggett's prints on  
12 there?

13          A           Not that I know of.

14          Q           Did you ever see the known fingerprints  
15 of John Moss?

16          A           Yes, I did.

17          Q           You testified that you had one of the  
18 known fingerprints of Mr. Reggett on the clock radio?

19          A           That's correct.

20          Q           How did the size of the other prints  
21 not identified compare with Mr. Reggett's?

22          A           The prints were smaller in size.

23          Q           And I would call your attention to  
24 Exhibit 107. Did you find any prints on that?

Shumate - Direct

1039

1           A           There were two identifiable latent  
2 fingerprints on that.

3           Q           And whose were those?

4           A           Two prints of the right thumb of Paul  
5 Reggett.

6           Q           And State's Exhibit 106, the flashlight  
7 -- did you find any identifiable fingerprints on that  
8 exhibit?

9           A           There were two identifiable latent  
10 fingerprints developed on the battery inside the  
11 flashlight.

12          Q           And whose were those?

13          A           The right thumb and right middle finger  
14 of Paul Reggett.

15          Q           Now, Lieutenant Shumate, I want to call  
16 your attention to State's Exhibit 101, the knife handle;  
17 159, the scissors; 157, the handkerchief box; 114, the  
18 wrapping paper; and also, ask you at this time if you  
19 examined a door -- the door that Vanessa Reggett was  
20 tied to?

21          A           Yes, I examined all of those.

22          Q           Okay. What did you find?

23          A           I found fabric marks consistent with a  
24 design that were similar to each other and what appeared

Shumate - Direct

1040

1 to be glove marks.

2 Q And did you make photographs of these  
3 designs?

4 A Yes, I did.

5 Q I want to hand you now what has been  
6 identified for identification purposes as State's Exhibit  
7 121, and ask you to tell us what that photograph  
8 involved?

9 A It's an actual lift from the knife  
10 handle showing the fabric marks.

11 Q So, that's an actual lift?

12 A That's an actual lift from the object.

13 Q I now show you State's Exhibit 122 for  
14 identification.

15 A It's an actual lift from the scissors  
16 showing the fabric marks on the scissors.

17 Q And State's Exhibit 123?

18 A It's two lifts taken from the bedroom  
19 door showing fabric marks.

20 Q Okay. State's Exhibit 124?

21 A It is a lift from the handkerchief box  
22 showing fabric marks.

23 Q Going back to this bedroom door that  
24 you testified to taking lifts from, were these fabric

Shumate - Direct

1041

1 glove print impression found on one side of the door or  
2 on both sides?

3 A As I remember, there was one on one  
4 side of the door and two on the back side, opposite the  
5 one on the front.

6 Q And what relationship would these be?

7 A It would have been like a thumb on one  
8 side and two fingers on the other side.

9 Q Now, I hand you what has been marked  
10 for identification as State's Exhibit 125.

11 A It's a photograph from the Christmas  
12 wrapping showing the fabric marks on what was apparently  
13 dried blood.

14 Q In the course of your career, have you  
15 had occasion to take fingerprints off blood, or from  
16 dried blood, before?

17 A Yes, I've seen it on numerous  
18 occasions.

19 Q I hand you back State's Exhibit 114,  
20 and ask you to examine and identify this exhibit, and  
21 show us where this -- what this photograph -- what is  
22 visible on this exhibit?

23 A It's the darkened area right below my  
24 case number and initials that shows the fabric marks.



Shumate -- Direct

1042

1 Q And in comparing State's Exhibit 121  
2 and State's Exhibit 125, these photographs that you've  
3 just testified to, were they consistent?

4 A They appeared to be of the same shape  
5 and design. All of the items had the same apparent  
6 markings.

7 Q I know, again, rehand you what has been  
8 marked as State's Exhibit 100.

9 I believe you testified that you received that  
10 from Trooper Williams on February 6th. Did you process  
11 this for latent prints?

12 A Yes, I did.

13 Q Were there any found?

14 A There were seven identifiable latent  
15 prints found on this stainless steel box.

16 Q And whose prints were they?

17 A They were identified as the  
18 fingerprints of Trooper Michael Don Smith.

19 Q Did you have the known fingerprints of  
20 Arbutus Johnson at that time?

21 A Yes, I did.

22 Q Were any of her identified prints found  
23 on this?

24 A No prints of Arbutus Johnson were found

Shumate - Direct

1043

1 -- no identifiable prints of Arbutus Johnson were found  
2 on this.

3 Q Did you find any other identifiable  
4 prints on this exhibit?

5 A There were markings of similar shape  
6 and size to the markings previously developed on the  
7 knife and the scissors, the bedroom door, the  
8 handkerchief box, and the Christmas wrapping paper.

9 Q Did you take a photograph of that?

10 A Yes, I did.

11 Q I hand you now what has been marked as  
12 State's Exhibit 126, and ask you to examine that and tell  
13 us what that is?

14 A It's a photograph of the fabric marks  
15 as they appeared on the box.

16 Q Now, Lieutenant Shumate, you testified  
17 that these markings were of similar shape and size -- are  
18 you able to compare a fabric or a glove print to a glove?

19 A No, I am not.

20 Q So, what you are testifying to is  
21 simply a visual comparison that you've done?

22 A That's correct.

23 MR. REVERCOMB: May I have just a moment, your  
24 Honor?

Shumate - Direct

1044

1 THE COURT: Of course.

2

3 BY MR. REVERCOMB:

4

5 Q Lieutenant Shumate, the photographs  
6 that I showed you, marked 121 through 126, do they  
7 accurately depict what you observed on the scene on  
8 December 13th?

9 A Yes, they do.

10 MR. REVERCOMB: At this time, your Honor, I would  
11 move to admit those into evidence.

12 THE COURT: Saving your objection?

13 MR. BICKLEY: We haven't seen them, your Honor.

14 We'll reserve our objection, your Honor.

15 THE COURT: They'll be admitted. You may pass  
16 them around.

17 I haven't seen them either. Let me see them very  
18 quickly.

19 MR. REVERCOMB: I'm sorry, your Honor. I thought  
20 you had already seen them.

21

22 BY MR. REVERCOMB:

23

24 Q One last question, Lieutenant Shumate.

Shumate -- Direct

1045

1 Did any identifiable prints belong to the defendant, John  
2 Moss?

3 A No, they did not.

4 MR. REVERCOMB: Your Honor, I believe that's all  
5 I have at this time.

6

7 CROSS-EXAMINATION

8

9 BY MR. BICKLEY:

10

11 Q Trooper Shumate, you've pretty much  
12 answered all of my questions, I think.

13 I'm just going to do it over again, real quickly,  
14 since you've been so kind. Just one more time for the  
15 road.

16 You said you don't find any fingerprints of John  
17 Moss?

18 A No, I did not.

19 Q And you have no training in glove  
20 comparison?

21 A No, I do not compare gloves to prints.

22 Q And normally, crime scene detectives  
23 and other people wear gloves; is that a true statement?

24 A They should. But a lot of times they

Shumate - Cross

1046

1 do not.

2 Q They're careless when they do not,  
3 right?

4 A That's correct.

5 Q And those smudge prints that we have in  
6 exhibits that are being published to the jury could have  
7 been made by anyone wearing gloves?

8 A Yes, sir.

9 MR. BICKLEY: I have no further questions.

10 MR. REVERCOMB: Nothing further.

11 THE COURT: Thank you, Lieutenant. You may step  
12 down.

13 Would you like to call your next witness, please?

14 MR. REVERCOMB: Yes, your Honor. The State would  
15 call Mr. Fred Zain at this time.

16

17 WHEREUPON, a bench conference was held, and the  
18 following transpired:

19

20 MR. HUFFMAN: Judge, with regard to Mr. Zain --  
21 Judge, I realized when he testified the last time there  
22 wasn't much foundation laid for him as a witness,  
23 particularly with regard to the procedures that he  
24 utilized, to which he is going to testify.

1047

1 I also note that on discovery, we received the  
2 report that has been filed with the Court. It appears  
3 that Randy Murphy -- and I think that's Randy Murphy's  
4 signature as opposed to Zain's -- I think in this  
5 particular case that he -- it's not necessary for the  
6 Prosecution to allow us to show what part he played in  
7 the analyses that were taking place, and what procedures  
8 were done in compliance with -- specifically, the  
9 procedures that were involved in the examination.

10 THE COURT: Yes.

11 MR. REVERCOMB: That's fine.

12 THE COURT: I think that's appropriate.

13

14 WHEREUPON, the bench conference was concluded.

15

16 (Back on the Record)

17

18 THE COURT: Folks, we're going to give you about  
19 fifteen minutes. You've got plenty of time to go get a  
20 cup of coffee.

21

22 (On the Record with the Jury Not Present)

23

24 WHEREUPON, Fred S. Zain was duly sworn, and on

1 his oath, deposed as follows:

2

3

DIRECT EXAMINATION

4

5 BY MR. REVERCOMB:

6

7 Q Would you state your name, sir?

8 A Fred Salem Zain.

9 Q Where are you currently employed?

10 A I am currently employed as the Chief of  
11 Physical Evidence of the Bayer County Crime Laboratory  
12 in San Antonio, Texas.

13 Q In 1979 and 1980, where were you  
14 employed?

15 A I was employed by the West Virginia  
16 Department of Public Safety, stationed in Criminal  
17 Identification Bureau at South Charleston, and was in  
18 charge of one of the identification units that handled  
19 physical evidence pertaining to the blood and body fluids  
20 and hair samples.

21 Q Is that called serology?

22 A Yes, that's correct.

23 Q You say that you were in charge -- what  
24 was your rank?

Zain - Direct

1049

1                   A           Lieutenant.

2                   Q           Were you involved in an investigation  
3 of the Reggettz murders back in December of 1979?

4                   A           Yes, sir, I was. I was called in to  
5 process the crime scene at the particular residence of  
6 the Reggettz family.

7                   Q           And did you collect samples at that  
8 scene?

9                   A           Yes, sir, I did.

10                  Q           And were some exhibits submitted to  
11 you?

12                  A           Yes, they were.

13                  Q           Who performed the analysis on those  
14 exhibits?

15                  A           I did.

16                  Q           I see a Sergeant Murphy's signature on  
17 this report, dated June 10th of 1980. Is it your  
18 testimony that you performed these analyses, too?

19                  A           Yes, sir. Sergeant Murphy, at the  
20 time, was in charge of a section, and we both counter-  
21 signed reports. And I processed all of the evidence that  
22 was submitted to me at the serology section at the time.

23                         The reports were either issued by himself or  
24 myself after conferring as to what should be issued in



Zain - Direct

1050

1 a report.

2 Q But it is your testimony that you  
3 performed the analysis?

4 A Yes, that's correct.

5 Q And what training had you received at  
6 that time in performing -- to perform such analysis?

7 A My formal education was a degree in  
8 biology, with a minor in chemistry.

9 I also received an Associate Degree in Police  
10 Sciences, and specialized training at the FBI academy at  
11 Quantico, Virginia, relating to the specific field of  
12 forensic science, and more particularly, serology, or  
13 tests and methods utilized in the identification of blood  
14 and body fluids.

15 Both basic and advanced courses were obtained by  
16 me from the FBI Academy and other specialized training  
17 sessions that I had attended, as well as scientific  
18 organizations which I belong to, such as the Southern  
19 Association of Forensic Scientists, and other peer  
20 groups.

21 Q At the time, in 1979, how long had you  
22 been a forensic serologist?

23 A I transferred from the Department of  
24 Natural Resources in 1976, where I was a chemist and a